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ABSTRACT

Papers and summaries from Rutgers University's 1981 Professions Forum, "The Professions and Ethics: Views and Realities in New Jersey," are presented. Titles and authors are as follows: an introduction (Louis H. Orzack and Annell L. Simcoe); "Do Special Ethical Norms Apply to Professions?" (Daniel Callahan); "Ethical Issues in the Work of Professionals" (Rosemary Chalk); "The Regulatory Process: Ethical and Legal Realities" (Douglas Harper); "Ethical Issues in Psychology" (Jean Balinky); "Emerging Ethical Issues in the Dentistry Profession" (Harmon Katz); "Unlawful or Incompetent Practice--Guidelines for Whistleblowing" (Dorothy DeMaio); "Ethics and Educational Concerns" (John Pietrowicz); "Pharmacy Ethics: Professional Idealism and Reality" (Louis Feld); "Emerging Ethical Issues in the Certified Public Accounting Profession" (William D. Schoolman); "Emerging Ethical Issues in Social Work" (Stephen Hecht); "Standard Setting and Antitrust Issues: the Engineering Societies and the Public Interest" (Hedvah L. Shuchman); "How Can Links between Ethics and Practice Improve?" (David Price); "Caring; An Ethical Issue" (Noreen E. Mahon); "Ethics at Operational Levels (Workshop Discussion)" (Michael David Rohr, Moderator); "The Professions and Ethics (Workshop Discussion)" (Robert L. Carter, Moderator); "Ethical Codes: Sorting Out Rhetoric and Reality (Workshop Discussion)" (Frank Fischer, Moderator); "The Professions and Ethics (Workshop Discussion)" (Jeffrey Slovak, Moderator); and "Perspectives on Ethics and Professions" (James M. Giarelli). A mission statement of The Rutgers University Committee on Professions and Public Accountability is appended. (SW)

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THE PROFESSIONS AND ETHICS
VIEWS AND REALITIES IN NEW JERSEY

Edited by
Louis H. Orzack
and
Annell L. Simcoe
Rutgers University Committee on Professions
and Public Accountability

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The Bureau of Educational Research and Development
Graduate School of Education
Rutgers University

1982

THE PROFESSIONS AND ETHICS

VIEWS AND REALITIES IN NEW JERSEY

PROFESSIONS FORUM PROCEEDINGS

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PREFACE

This volume contains the papers presented and summaries of Rutgers University's Professions Forum held November 17, 1981, "The Professions and Ethics: Views and Realities in New Jersey."

The success of this conference was manifest in the widespread interest attracted within the University from the range of professions in the state, and from members of the public. The conference permitted a wide-ranging exchange of ideas and information. It brought together representatives of professions, government, the university, and the public, and provided an unusual opportunity for those persons to discuss, if not resolve, pressing issues associated with professional services.

As the State University of New Jersey, Rutgers provides advanced professional as well as preprofessional education in a number of fields. The University seeks to develop competencies and opportunities by means of which its faculty and students in professional and academic programs can contribute to the people of the state through education, research, and service.

One indicator of Rutgers' commitment was the creation of a University Committee on Professions and Public Accountability. Its mission is to initiate educational programs cutting across specialty lines and combining the resources and skills of the university, professional community, and the public. These programs are intended to clarify social, economic, legal, and educational issues affecting the professions and their services. (The complete mission statement of the Committee is contained in the Appendix).

The conference on ethics in the professions followed earlier Forums on governmental authority and professional responsibility, inter-professional relations, and competency and credentials. The recent conference on ethics adds to the continuing concern of the University with the welfare and the well-being of the state and its population.

The continuity of effort manifested in these programs of the University Committee has been aided by its cross-professional character. Representatives of various professional schools and programs at Rutgers comprise its membership. Its state-wide Advisory Board encompasses individuals from a wide range of professional associations, regulatory boards, other governmental bodies, and the public.

The University Committee and its Advisory Board represent a pioneering effort by Rutgers University to address the many issues and problems that arise from the contemporary professions and their work. The publication of proceedings from the conference on ethics and the holding of the earlier meetings reflects a widespread awareness that the specialized contributions of professionals in modern society confront far-reaching

criticism from many quarters. Changes in the nature of expectations for professional services are common. Through an ever shifting mixture of public attitudes and beliefs runs the certainty that professions make vital contributions to the broad welfare of society as a whole and to the resolution of significant problems faced by individuals in the society.

Challenges to and disagreements about the work of the professions can best be addressed on a broad scale. The professions acting in isolation cannot cope effectively with them. Neither can the University by itself. And government alone does not have the resources to do so. The undertakings of the University Committee bring together these and other various interested parties, both within the University and outside it, and constitute a major attempt to combine their concerns in order to produce a broader understanding and augmented service.

This forum was made possible through the cooperative efforts of the University Committee; its Advisory Board; and the Bureau of Educational Research and Development, Graduate School of Education. Special recognition is given to Dr. Irene Athey, Dean of the Graduate School of Education; Dr. James Young, Provost of the Newark campus of Rutgers University; and Dr. Charles Nanry, Dean of Rutgers University College in Newark and Co-Chair of the University Committee for their support and contributions to the realization of this forum.

We appreciate the efforts of the members of the University Committee and the state-wide Advisory Board for their cooperation and critical suggestions during the planning of the forum. These groups made it possible for us to obtain the unusual, diverse array of speakers and participants from academic fields, associations, regulatory agencies, and state government.

Special thanks are extended to Hank Oosterveld, Bureau of Educational Research and Development, for his coordination of the publicity and registration for the forum and to David Kunz of University College for his logistical contributions.

The typing of all correspondence and publicity for the forum as well as the manuscript for this monograph was done by Helen Laub and Fran Kane of the Bureau of Educational Research and Development. For their outstanding performance and their endless patience, we thank them.

Louis H. Orzack, Co-Chair
Annell L. Simcoe, Member
The University Committee on
Professions and Public Accountability

Rutgers University
January, 1982

INTRODUCTION

Louis H. Orzack
Annell L. Simcoe

One aim of the University Committee on Professions and Public Accountability, founded in 1978, is to provide educational forums covering important issues that confront the role of professions in the modern era.

The University Committee has a state-wide Advisory Board comprised of representatives of many professional associations, regulatory or licensing boards of the state government, other government boards, and selected individuals. The University Committee, with input from the Advisory Board, has sponsored previous forums on topics such as public regulation and professional responsibility, boundary disputes among professions, and the relationship of competency and credentials.

The forum on "The Professions and Ethics: Views and Realities in New Jersey," held November 17, 1981, addressed a need that had often been brought to the attention of the Committee. Accelerating demands for professional services coming from the public, shifts in the complex technologies associated with those services, developing pressures on the educational and regulatory boards of state government, replacement of older modes of delivering services by newer mechanisms, and a growing rate of many kinds of malpractice charges against professionals - all affect the exchanges among specialists and influence the contacts that professionals have with consumers of their services.

Why limit the scope of the Forum to New Jersey? Is the condition of ethics in New Jersey worse than anywhere else? No scholarly evidence supports any conclusion about the comparative level of ethical awareness or the application of ethical norms to professional practice in the various states. The answer, then, is that no single state has previously been the focus of a conference on the conditions of ethics and the professions.

While organizations such as The Hastings Center, the Center for Business Ethics at Bentley College, and the Center for the Study of Ethics in Professions at the Illinois Institute of Technology have stimulated discussions about ethics at a national level or have evaluated ethical aspects of particular professions, a broad review of ethics and professions in a single state has not been undertaken.

The study of ethics in a particular state has a distinct importance.

Dr. Orzack is a Professor of Sociology at Rutgers University.
Dr. Simcoe is a Professor and Director of Professional Development, Bureau of Educational Research and Development, Graduate School of Education, Rutgers University.

Regulatory and licensing boards are most commonly organized within the United States by the authority of state government. Except for certain occupations in air and sea transport and electronic communications, most licensed occupations and professions fall to the sovereignty of the states. Disciplinary and license revocation procedures are among the responsibilities of state boards. Likewise, these boards provide protection of due process for those licensed when subject to revocation or suspension processes.

It is the professional associations within a state which often hear charges of ethical transgression by their own members or members of other associations. Whether or not colleagues and peers organized in associations can assume appropriate or effective responsibility for the monitoring of the behavior of members or fellow specialists who choose not to join such associations is an open question. The associations often serve as targets for criticism in the case of egregiously offensive acts by someone who is thought to have the same professional identity. If only for reasons of public relations, leaders of state professional associations are often expected to defend the actions of a person in the applicable profession. Failure to do so results in the charge that the association is nothing more than the establishment or exists mainly to protect the interests of its members. Given that both regulatory boards for professions and associations of practitioners in the professions are organized within the boundaries of particular states, the proposal that Rutgers University sponsor a conference on the ethical affairs of the professions in the state of New Jersey seemed significant.

The importance of cross-speciality contributions to the discussion of ethics was viewed as essential. Therefore, speakers from various professions nominated in some instances by an association, were included on the program as speakers and moderators. The forum was put into a broad context by Daniel Callahan, director of The Hastings Center, a leading national center specializing in the analysis of ethics in health and higher education. Rosemary Chalk of the American Association for the Advancement of Science gave another perspective to the analysis of ethics in the professions by assessing the ethical responsibilities of national scientific and professional organizations. Douglas Harper, Deputy Attorney General in New Jersey, discussed the legalities that govern professions and questioned the viability of any other governance system.

These presentations provided a framework for group interaction to analyze the ethical perspectives and relevance of each to various professions. Ethical issues in the professions were discussed by Jean Balinky from the New Jersey Psychological Association, Harmon Katz from the New Jersey Dental Association, Dorothy DeMaio from the New Jersey State Board of Nursing, John Pietrowicz from the New Jersey Education Association, Louis Feld from the New Jersey Pharmaceutical Association, William Schoolman from the American Institute of Certified Public Accountants, Stephen Hecht from the National Association of Social Workers, and Hedvah Shuchman from the Engineering Societies. Their comments, of course, do not represent official statements of any of the associations.

The forum concluded with presentations on improving links between ethics and practice by David Price from the University of Medicine and Dentistry of New Jersey and Noreen Mahon from the College of Nursing, Rutgers University.

The decision to publish the proceedings of the forum resulted from the encouragement and requests received from those in attendance as well as from individuals who were unable to attend.

A rereading of the papers and moderators' summaries calls to mind the comment by the distinguished scholar and sociological colleague, Eliot Freidson, when he chose to apply the term, "delinquent community," to the professions as groups. He went on to note that professions as groups avoid social control in the public interest, adding that such an effort, if it were to occur, could raise the moral as well as the technical level of professional service.

That observation may apply to individuals and segments of the professions represented or appraised at the forum. It can hardly apply to professions in their totality. While the actions of certain segments of professions and professionals can be characterized as delinquent, the essential character of the work of professionals is its critical significance for the lives of those who need those services. Competent, dedicated, and helpful professional services are important in many sectors of our lives. It is urgent that they be done well, first of all, from the standpoint of the client or patient and secondly, from the standpoint of the society.

We do not point a finger at the professions or at professionals as comprising delinquent communities of unethical persons. We have stressed throughout the planning of the forum itself the lofty standards applied to the professions and the services of professionals.

The encouragement of the aspiration for excellence in professional services is a direct implication of the mission of the University Committee on Professions and Public Accountability. It seeks to develop educational programs concerned with changes in the position and responsibilities of professions in modern life. Professions have importantly critical contributions to make to the lives of the public. We emphasize this by furthering interchanges among the University's faculty and students in the professional schools and the arts and sciences; strengthening contacts between those persons; and developing opportunities for the mutual exchange of ideas and reviews of experience with individuals and groups outside the University - the public, the practitioners, the regulatory boards, and the associations. The forum on ethics is one example of this undertaking.

DO SPECIAL ETHICAL NORMS APPLY TO PROFESSIONS?

Daniel Callahan

As the first speaker, I think it incumbent upon me to try to map the terrain that you will be covering today. The topic of professional ethics is a very broad one. One can ask, "Just what is a profession?" Is business a profession? Are journalists "professionals"? Or dietitians? Beauticians? The terms "profession" or "professional" have a lengthy and complicated history. When one tries to tie together the notion of being a professional, or being part of a profession, with that of ethics, one can run into a variety of complications.

The question I have been asked to address, "Do Special Ethical Norms Apply to Professions," can be best approached by trying to get some sense, first of all, of the range of ethical problems that now face professionals, and to make some distinction among the types of problems. Let me rapidly run through a variety of obvious problems to remind you a bit about the dimensions of professional ethics.

A journalist is told by a court to give up his notes which he gained in confidence. Should he do so? A nurse is ordered by a doctor to provide no further care to a defective infant. The nurse believes that is an immoral order. Should she follow it? A lawyer is told by his or her client that a crime is being planned. Should the lawyer break the lawyer-client relationship and report that possible crime? A research scientist needs to deceive people in order to gain research data. Does the scientist, in the name of higher truth, have the right to engage in that deception? A team trainer is told by a coach to give a player a pain killer in order that the player can get back on the field. The possible consequence of giving that pain killer may be permanent damage to the player. Ought he to do so? A plant manager knows of some serious health hazards, but also knows that a plant might have to close if costly repairs and safety steps were undertaken. Should the manager tell the worker of the health hazards? A businessman knows that his superior is bribing people. Should he blow the whistle, and to whom?

Now the general point of these examples, which could be endlessly multiplied, is that all professional roles will in one way or the other involve value conflicts of one kind or another. Let me simply try to lay out some different kinds of conflicts.

First of all, there can be a conflict of values or of ethical principles within a profession, that is to say, when a profession espouses a number of values and the problem then is to deal with those situations where the multiple values seem to come in conflict with each other. For instance,

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Mr. Callahan is Director of the Hastings Center, Hastings-on-Hudson, New York 10706.

it is taken to be the duty of physicians to try to save the lives of their patients. But what if the welfare of a patient apparently requires that the patient be allowed to die? Which obligation ought to be served in that case? Or to use another medical example, nurses ought to provide loving, kindly care to patients. However, they ought also to be efficient in order that they can serve the most patients in the best possible way. How ought they to balance off the obligation both of efficiency and of caring?

In short, professions can and often do espouse more than one value. Those values can come in conflict. There can also be conflicts between professional values and the values of the broader society. For instance, a lawyer has a special duty to maintain a relationship of confidentiality with the client. What if, and to go back to the example I used earlier, there is a conflict between the lawyer's duty as a citizen to report crime and a duty as a lawyer also apparently to maintain confidentiality? There are circumstances surely for professionals where what seems demanded by a code of professional ethics, or by the way at least a professional interprets his or her obligations, can come in conflict with what seems to be the general duty of all citizens.

Third, there can be a conflict between the personal values of professionals and the values espoused by the profession of which that person is a part. Here I will simply remind you of the example of abortion. Ought a nurse who believes abortion is wrong dissent from serving the needs of those patients who feel it is their right to have an abortion, or perhaps even to refuse to work in a hospital where abortions are routinely performed? How are we to make a decision between the personal values of people and what may appear to be their professional duties?

If one begins to understand that the value conflicts can be multitudinous - conflicts among values within a profession, conflicts between professional values and broader societal values, and conflicts between personal values and professional values - one has, of course, multiplied the possibilities of conflict and of tension.

To examine the question of the moral rules, obligations, and duties of a profession, and to ask to what extent they ought to be special, it is helpful to keep in mind those cases I mentioned. It is also, I think, important to get some sense of how the social situation and the power of the professions in our society is very rapidly changing. Not really until the late nineteenth century were the professions powerful in our society. By and large the most prominent professions - medicine, law, ministry and education were not dominant or all-powerful professions, in great part, certainly in the case of medicine, because medicine did not have that much power to cure people of their illnesses. The law did not dominate our society the way it does now. The number of professionals or those even thought to be professionals was very small.

During the twentieth century, however, we have seer an enormous explosion in the number of professionals, in the number of groups designated as or understood as professions, and finally, and most critically, in the power of the professions over the lives of citizens. Medicine now can make a fundamental difference of life and death which it could not do earlier.

The law runs through all parts of our society and is obviously a major force. There are social workers who can make a great difference in our lives. There are nurses, there are accountants, there are any number of fields upon which we depend, sometimes at moments of crisis or emergency, at other times simply to transact the ordinary daily business of life. It is the power of the professions which creates now the special moral problems of the professions. If the professions do impinge very directly on the lives of all citizens, does that then impose upon them some special rights; or does it impose upon them some special obligations with which go some special rights; or are the values and moral principles that ought to be held by professions not essentially different from the moral obligations and rights of all citizens?

I think it helpful to come at that question by means of a couple of routes. One thing I would want to suggest, simply as a background matter for understanding the question of special obligations and rights on the part of professionals, is that it is necessary to make some further distinctions among the types of moral problems that arise for professionals. I would suggest there are three types of moral problems and with each of those types will, I believe, come some particular sub-problems of the broader question of obligations and rights.

The first and most obvious set of problems are those I would call personal-moral dilemmas - when a doctor says "What ought I to do with this patient?" or a lawyer says "What ought I to do with this client?" - here the question is one of what to do about another individual who has come within his or her professional realm.

A second type of moral problem for professionals is of a somewhat different sort. Those I would characterize as the ethical problems of institutional structures and arrangements.

A third category would be the moral problems posed by the use of certain methodologies, techniques, or characteristic modes of operating on the part of professions.

Let me try to spell out those three categories. The first moral dilemma, that of personal moral choice is often thought to be the characteristic and standard moral problem on the part of professionals, and there is no doubt that it is perhaps the most common, patent, and pervasive. Here one might think of questions concerning telling the truth or lying to patients or clients, the issue of whistle blowing, what an employee ought to do about certain abuses or illegal actions, the doctor-patient relationship, say in the care of a dying patient, when the question is what does the doctor owe that patient, issues certainly of abortion which involve some profound moral decisions, questions faced by those professionals who work in hierarachies and bureaucracies, say military officers, nurses, sometimes business people, where there may be issues at stake concerning the following of immoral orders. In short there are a range of personal moral problems that can confront professionals.

Yet quite a different range of problems may also confront professionals. Those are the problems which I refer to as the moral problems of institu-

tional structures and arrangements. Such problems may involve perhaps affirmative action and equal opportunity practices in professions or institutions; or unjust hiring, firing, and evaluation systems; or shutting down plants when people might be put out of work; or lawyers knowingly allowing clients to perjure themselves in the name of the adversary system; or a nurse's pursuing efficiency which organizations prize, rather than humaneness, because efficiency might be the main value of health administrators.

Now in all of those circumstances a personal dilemma may be posed, but more broadly the question is what ought a profession as a whole or an institution employing professionals do about certain widespread practices. What perhaps ought they to do to change the institutional structures and arrangements? How do some institutional structures perhaps set up or throw before employees or professionals moral dilemmas that they ought not to have in the first place?

The Hastings Center has recently been doing some work with the U. S. Army, trying to develop military ethics programs. One finding is that many in the military feel that there are many standard ways of doing things in the military which in effect force people to act in immoral ways. For instance, commanders like to have good readiness reports to show to their superiors; subordinates then are put under great pressure to produce figures that look good. If they don't produce the figures, they are thought to be disloyal to their superiors. The problem, of course, is that the system itself is at fault; the moral dilemmas arise because people are caught in situations that they should not have to be caught in at all.

The third category of moral problems would be those posed by the methodologies or traditional or standard ways of operating in different professions. For instance, if one is a professional public policy analyst, the use of cost benefit or risk benefit analysis may be one of the methodological tools one uses in trying to make public policy decisions. However, those tools can carry with them some implicit or hidden values. To simply make use of the standard tools in one's trade, if one is in public policy, can have the very subtle effect of biasing decisions in one way or another. Most methodologies and techniques are not value free, but often professionals like to think they are. The question then is what is likely to be the moral impact of using those technologies.

The adversary system in our country is a fundamental part of law. But the adversary system is a system designed to produce, not truth, but justice. And sometimes it would appear that truth can be sacrificed in the name of justice. I think the adversary system is probably the best system there is, but, nonetheless, it's a system the use of which can create moral problems that might not otherwise exist.

In short, when considering moral problems, professionals should consider not only personal dilemmas, but also consider the way institutions and organizations are arranged and the kinds of moral problems they can generate, and finally examine the moral implications of the methodologies, techniques, and characteristic ways by which professionals operate. They

too can create moral problems.

I would also suggest that moral problems very broadly be understood to fall into two categories. These categories I will call dilemmas of virtue and dilemmas of principle. By a dilemma of virtue, I mean essentially this, those circumstances where people know clearly what ought to be done, and there is no particular social disagreement on what ought to be done, but nonetheless because of external pressures - a weakness of will, or personal corruption, people are tempted to do that which they know they ought not to do. I think a great deal of the concern with professional ethics is that professionals are not living up to standards they supposedly agree with and that the public believes they are operating under. The great pressure from the public, it seems to me, at least in recent years, is getting professionals to do what the professionals themselves know they ought to do.

A dilemma of virtue, then, is a situation where there is no doubt about the right course of action, but where doing the right thing can be exceedingly difficult because of pressures of one sort or another.

Quite a different sort of moral problem, I think, is posed by what I would call a dilemma of principle. I am here referring to those circumstances where someone wants to do the right thing, but it is simply not clear what the right thing to do is. Here we can go back to some of my earlier examples: consider the circumstance of a journalist who wants to maintain a confidential source, but is faced with the demand of a court that the information be revealed for the sake of justice. Well, maintaining confidentiality is a virtue for a journalist; but so also is maintaining the system of law and obeying the courts. What ought to be done in that circumstance? Consider a physician faced with the dilemma of trying to keep a patient alive or of trying to reduce suffering? Perhaps both cannot be achieved simultaneously -- where does the greater duty lie?

In short, many professionals are faced with situations, where, despite their willingness to do the right thing, perhaps because of a conflict of different values and principles, it is not clear what the right thing is.

Now with all of those distinctions in the background, distinctions which I hope might be of some use in the rest of the conference, let me turn very directly to the question of whether special ethical norms apply to professions.

I think that the straight-out answer is both yes and no.

Yes, in the following sense. Professionals by virtue of their roles, I believe, do take on moral obligations that are simply not the obligations of other people. Physicians have a special obligation to worry about the health and illness of other people. Lawyers have a special obligation to represent clients and uphold the system of law, obligations that go beyond those of ordinary citizens. Social workers have a special obligation not shared by others, to the poor and to others put in their charge.

One thing that is important in trying to understand the obligations of professionals is that obligations by and large go with power. The profes-

sional is often in a situation not of equality with patients or clients or others, but rather possesses special knowledge, special power, and thus often creates by that special knowledge a situation of inequality.

Professionals are powerful, and because of the sway they can hold over others, they will have duties that others do not have. Not only ordinary human duties, but rather the duties that are specific to that role, job, work, or profession that they have undertaken.

Now, of course, along with the obligations that go with power come certain rights. We allow surgeons to cut into bodies in a way we don't allow other citizens. We allow lawyers under the adversary system to do some things that we would not find tolerable with the ordinary person. We give professionals certain rights to do things that will not be shared by the rest of the population. And we give them the rights because we understand that they cannot discharge their moral obligations unless they have certain moral rights which allow them to do so. In this sense, there is a symmetry between obligations and rights. If professionals are meant in our society to carry out certain tasks, we need to give them the power, the wherewithal, the legal and social rights that go with that kind of a role.

Now in that very general sense - that there are both obligations and rights - one can go back to some of the categories I suggested earlier and look at them from that perspective. There are obligations on the part of professionals toward individuals. They have obligations toward those in their power or under their sway, and they have rights to do certain things to those people. That will then generate moral difficulties on occasion and sometimes of a very severe kind. Professionals also have an obligation to uphold the standards and traditions of their profession. It is not enough that they personally behave properly, but also that they do what they can do to make certain that other professionals do the same. In that sense, it is important that professionals uphold the standards of their profession in general, not only because not to do so is likely to bring the profession into disrepute - leading to a great deal of mistrust, apprehension on the part of the public - but also because professionals are greatly dependent upon the integrity of each other in order to carry out their work. A health care team depends upon the integrity of all its members. A lawyer working within a legal system depends in great part for the working of that system on the integrity of other lawyers. Social workers certainly depend upon the integrity of the agencies with which they work, and they also depend upon the integrity of their colleagues, say in matters such as fair and decent case loads.

Professionals also have special obligations and duties toward the society as a whole. Though professionals may have individual patients or individual clients, they will also have public duties which may on occasion transcend their obligations to particular individuals. Medicine ought, in general, to promote the health of citizens. The law ought to promote the maintenance of a system of justice in our country. The social work profession ought to be promoting the welfare of the sick and the needy. On occasion, of course, those broad obligations can create some severe moral problems, when what is required by an individual client or patient might do some harm to the general public. In each of these situations, dilemmas

and conflicts can be generated. Nonetheless, that is a part of the life, I would suggest, of professionals, even though it may be difficult to decide between an obligation to an individual versus a broader obligation to the public, that tension needs to be maintained and, on occasion, some hard moral choices may have to be made.

Yet it is not enough to point out the rights and obligations of professionals, or even to point out that those rights and obligations spring from the very necessity of carrying out the work of professionals. That by any means exhausts the question of whether there ought to be special ethical norms for professionals. One way that issue might be understood is to ask whether professionals have a right to violate the more general moral norms and rules of a society in carrying out their professional duties? For instance, an accepted moral principle in our society is that we ought not to lie to each other. This is a very simple moral duty. However, ought doctors to have a special right to lie to the dying in order to save them from suffering? Ought lawyers have the right to lie in order to defend the interests of clients?

Some would argue that professionals ought to be able at least on some occasions to break ordinary moral rules. I disagree. I find it difficult to think of any circumstances where professionals could legitimately be said to have a right to violate common moral principles simply by virtue of being professionals. When professionals are given certain rights by society, it is understood that with those rights comes a process for exercising those rights. The rights are not given capriciously; they carry with them certain conditions and restrictions, sometimes explicit, at other times implicit. Those restrictions and conditions are meant to assure the public that professionals do not have radically different moral standards, but are rather expected to apply the general standards of society to their specific work as professionals.

Take the case of the physician and lying. A physician's primary duty is to the welfare of patients. On occasion, a lie may serve that welfare. But as a society we might agree that any human being faced with a circumstance where the welfare of one human being was in the power of another might also be allowed to tell a lie. I don't think any of us, to use a very extreme case, would have any difficulty lying to a child about to commit suicide, if the lie would stop the suicide. We would, I think, agree that a higher value than that of truth-telling was at stake. So even in the circumstance of a physician telling lies, I think the standard is not inherently different from the one we would apply to people in general. In the case of the lawyer working in the adversary system, there is a circumstance where we have established agreed upon rules for the prosecution of cases and for the defense of crimes. The adversary system is a system that has specific rules that limit mischief and try to mitigate possible forms of negligence resulting from it. In that case, lawyers are given a special right to do things. At the same time there is no right that I know of which really allows them to do something which would generally be immoral for other people.

All of this is really to say that I don't believe there are special ethical norms for the professions, ones that allow them as professionals

to break general rules. The coherence then, between professionals and the public ought to be a very solid and seamless one. The same rules apply to all.

I have given you a yes and a no answer to the question set for me today. The public has never believed that the professions ought to set their own rules, rules that are at variance with common morality.

ETHICAL ISSUES IN THE WORK OF PROFESSIONALS

Rosemary Chalk

There are several categories of ethical issues that may arise from the work of professionals. These can be viewed from both a micro- and macro-level. The micro-level examines these issues in the context of the individual relations of professionals (relationships with patients, clients, students, and others). The macro-level looks at these same relationships in the context of the collective effects of individual judgments, or the social impacts of the work of the profession as a whole.

Unfortunately, there has been much emphasis of late on the micro-issues at the expense of the macro-questions. There is a natural tendency for us to steer away from open-ended issues towards those that appear to have a final solution. By seeking to define ways in which individual professionals should act, therefore, we in the professions have been guilty of often avoiding looking at the principles which actually govern individual actions.

Three Categories of Issues

What are these categories of ethical issues? I can suggest three:

1. The duty to inform. Providing expert knowledge and services for use by employers, clients, and the general public is the basic function of professionals. Just as ordinary people, professionals have an obligation to ensure that their products and services are truthful and free of error, and that they do not deceive others. From this basic principle stems the traditional emphasis within the professions on the importance of continuing education (to ensure that services and information are not out-of-date) and the importance of maintaining integrity and accuracy as a basic rule in science, medicine, and other professional areas.

2. The duty to warn. Everyone has a personal duty to protect one's self and others from injury. This leads to a parallel duty to warn others of harm or possible danger, particularly if the danger stems from our own actions or decisions. Professionals have this same duty. As they are often the first to know about areas of possible harm, there are a host of questions associated with the responsibilities of professionals to warn of areas of possible risk or potential harm. These questions usually involve conflicts over the importance which should be attached to preliminary or uncertain data. If one places greater emphasis on the responsibility of professionals to warn accurately, then a certain degree of conservative judgment will influence a decision as

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Dr. Chalk is a Staff Officer for the Committee on Scientific Freedom and Responsibility of the American Association for the Advancement of Science, Washington, D.C.

to whether or not one should immediately sound the alarm about possibly unsafe products. If one places greater emphasis on the duty of a professional to protect others from harm, however, one may be more liberal in judging how soon a professional should be urged to speak out about possible dangers. A key question here is whether a "false alarm" is a worse result than a possibly minor injury. When the products or services involved are distributed on a large scale, then one must also pragmatically address the economic consequences of early warnings in the absence of unconfirmed results.

There are no clear guidelines to assist professionals in resolving this dilemma of early warning. John Edsall has written:

> Scientific experts, including engineers, physicians and many others, are particularly qualified to point out opportunities for technological improvement and to warn of dangers. Experts who may feel an obligation to speak out on such issues may come into sharp conflict with their employers, or with other vested interests. How are such conflicts to be resolved in the service of truth and the public interest, so that the scientist has both the freedom to speak and the responsibility to inform and warn the public? How are such conflicts to be adjudicated fairly, with safeguards for the rights of all concerned?[1]

3. The duty to ensure equitable access to professional services and information. Do the professions provide equity and if so, how? Different groups have established various traditions. The legal profession, for example, has a history of fostering a mandatory responsibility for pro bono work for each attorney. The medical professions rely heavily on government services to provide equal access to health services. The more scholarly professions turn to the marketplace of ideas as their means of ensuring equity, and thus rely heavily on publication, open communication, and free expression of ideas.

In a recent report on professional ethics,[2] scholar Michael D. Bayles describes a range of ethical issues that also apply to the professions. These include conflict of interest situations, the types of fees charged for professional services, the appropriate scope of professional work, and responding to a client's request for services which a professional considers to be ethically wrong.

Conflicts Among Ethical Principles.

When confronted with basic ethical dilemmas; that is, ethical principles in conflict in these or other categories, there is a natural tendency for the professions and their members to seek clear or simple solutions. In recent years there has been a noticeable emphasis on developing codes of ethics as a means of resolving basic ethical dilemmas. The proponents of this approach seem to argue that if a professional is told by a code that he or she must warn of possible dangers, or must ensure equitable access to professional services, then the dilemmas involving these principles will be successfully resolved.

Although I favor an emphasis on public interest concerns in developing professional ethics activities, I am skeptical about this reliance on rules or codes as a means of resolving basic ethical dilemmas within the professions.

One philosopher, John Ladd at Brown University, has articulated some of my worries in this shift towards codes as a means of addressing ethical concerns in the professions. To paraphrase Ladd:

> The notion of an organized professional ethics is absurd. Ethics is basically an open-ended, reflective, and critical intellectual activity. Ethical principles can be established only by argumentation--they cannot be settled by agreement or by authority. Ethics is not rule-making or law-making. Ethical principles as such cannot be established by associations or by a consensus of their members.
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> Ethics must, by its very nature, be self-directed rather than other-directed... There is no special ethics belonging to professionals. Professionals are not, simply because they are professionals, exempt from the common obligations and duties that are binding on ordinary people. They do not have a special moral status that allows them to do things that no one else can.[3]

Ladd goes on to note that professionals may have special duties over and above those they would have as ordinary people. But he points out that these duties stem from ordinary responsibilities rather than from unique standards adopted by their professions.

In addition, it is important to note that there are significant changes occurring in the traditional environment which shaped many professionals' perspectives in their approach to ethical issues in their work. Some of these changes include:

1. Practice as an isolated individual is changing to team practice.
2. The use of knowledge from a single discipline is being replaced by use of knowledge from diverse disciplines.
3. Compensation is changing from fee-for-service to salary.
4. The limits on altruism involved in solo professionals' entrepreneurial private practices (the concern with attracting clients and making a living) are decreasing.
5. The opportunity for colleague evaluation is increasing.
6. The privacy of the professional-client relationship is decreasing.[4]

Responses to Ethical Conflicts

There are a number of new approaches within the professions directed toward identifying and resolving the key ethical dilemmas within professional work. These are derived from day-to-day work experiences rather than

from the codes themselves. One of the most striking examples that I've seen is a survey published by the editors of Chemical Engineering which proposed a set of case studies for the journal's readers.[5] One case is particularly interesting because of the insight which it offers into the current conflict within the chemical engineering profession as to how one should resolve dilemmas between employer loyalty and the duty to warn which I described above. The case describes a scenario in which a plant manager learns that a toxic substance produced as a by-product in plant operations has been accidentally dumped into a sanitary sewer by the night foreman. The case stipulates that no harmful effects from the dumping have been reported, which is learned by "discrete inquiries" by the plant manager to his friends at the sewage plant and the health department. The case then suggests to the reader several possible actions for the plant manager: (1) inform government authorities about the incident as required by law, even though no apparent harm resulted; (2) keep the incident quiet; (3) let corporate management make the decisions whether or not to report the incident; or (4) take some other action.

A slight majority of the readers responding to this case indicated that they believed the first option--informing government authorities--was the "right" action to take. Almost a third of the readers thought that corporate management should make the final decision. When asked what action the readers thought "most engineers" would take, however, the responses shifted. Almost half indicated that they thought "most engineers" would let corporate managers make the final decisions, while only about 13 percent suggested that they thought the rank and file engineers would inform the government themselves.

I find this shift troublesome. It is one thing to promulgate a basic code of conduct that places public concerns above private loyalties. But it is useless to adopt this approach if the code is accompanied by a strong sense of apathy or a sense that it is not practical--that most engineers simply would not act in a way that their peers believe they should. I also believe that this is probably a very accurate perception of what is occurring, not only within the chemical engineering profession, but within the professions as a whole. I believe it reflects a sense of loss of personal accountability within the professions for the results of one's actions, and I think this loss is reinforced by a lack of emphasis on associating an individual professional action with a specific end-result.

Encouraging Personal Reflection

Let me offer one final example of a personal reflection on ethical principles in professional work. The example is drawn from the autobiographical writings of theoretical physicist Freemon Dyson who worked on the development of radar technology in World War II and subsequently developed key ideas in the physics of fusion. Dyson writes about his experiences as an adviser to the Defense Department during the Vietnam War:

> The most ambitious attempt by civilian scientists to intervene in the Vietnam war on a technical level was a project called The Barrier. The idea of the Barrier was to stop enemy soldiers from walking into

South Vietnam by means of an elaborate system of electronic burglar alarms and minefields dropped by airplanes along the frontiers.

Secretary of Defense McNamara was enthusiastic about the Barrier, believing that it would be a substitute for the costly and politically unpopular use of American ground troops in search-and-destroy operations. The professional soldiers were less enthusiastic. They did not believe it would work. I was invited to join the Barrier project and considered with some cause the ethical questions it raised. According to my general principles of preferring defensive strategies, the Barrier was theoretically a good idea. It is morally better to defend a fixed frontier against infiltrators than to ravage and batter a whole country.

But in this case, if one believed that the war was wrong from the beginning, a shift to a defensive strategy would not make it right. I refused to have anything to do with the Barrier on the grounds that the ends it hoped to achieve were illusory. But I do not condemn my friends who worked on it in good conscience, believing that it would save many lives and mitigate the effects of the war on the civilian population of Vietnam. Their efforts were in vain, for the Barrier was never installed. If it had been installed, it would not have changed the course of history.

I believe that the Barrier would have been not only effective but morally good, if there had existed inside it a government and a people with the will and the competence to operate the system themselves. As a part of an indigenous effort of a country to defend itself, the Barrier would have made sense. What made no sense was for American technicians and air crews to operate a sophisticated defense system around a territory that had no political cohesion and no capable military forces of its own. It is unfortunate that the concept of the Barrier grew out of a hopeless attempt to save the American intervention in Vietnam from inexorable defeat. The association with Vietnam gave a bad name to a good idea.[6]

I see this kind of personal, self-directed moral reflection conspicuously absent in our professional literature. I'm not sure why this is so. But I believe it stems from the sense of disassociation between professionals and the effects of their work which I touched on earlier. It is this "macro-issue" of personal accountability in modern professional work that I think has been ignored by the professions, and which I think needs some critical attention.

Hopefully, this conference will be one step toward creating a new sense of awareness of the importance of open-ended discussion, directed toward improving the benefits of science and technology, and reducing their harmful effects among professionals.

Thank you.

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THE REGULATORY PROCESS: ETHICAL AND LEGAL REALITIES

Douglas J. Harper

I would like to preface the comments that I am about to make by saying that they reflect primarily my own views. They do not necessarily reflect those of the Attorney General. However, they stem in large part from my experience in working with the professional and occupational regulatory process within the Department of Law and Public Safety.

The issue which was presented to me in the preparation of these remarks was this: "What ethical issues arise from or as a result of the efforts of professionals as a function of regulatory activity of professional licensing boards?" I submit to you that the answer when viewed in relation to the regulatory process and the interweaving of ethical and legal standards, is none. I submit to you that the answer for this is essentially a simple one that turns on a rejection of semantic distinctions. When one speaks of regulation which affects the conduct of licensees, and I mean any set of licensees, the concept of "ethics," however that term may be defined, merges with the establishment of regulatory standards, i.e., the standards which are to be applied within any particular setting or as a general fabric to define licensee conduct. I would further submit that the proper role of standards setting vis a vis ethics is nothing more in terms of the regulatory process than a duplication of the traditional legislative function; that is, an attempt to define with some precision a common set of values or standards which in turn reflects a balance of competing interests within our society.

What does this really mean? In my view it means that when ethical principles are being discussed, especially in terms of the regulatory process (i.e., the regulatory process is that process which is established by law in order to assure that certain predetermined standards are met and implemented by the licensed class), it doesn't make any difference whether you label the standard as one of ethics or as a rule of law. They merge in the sense of creating a minimum level of acceptable conduct for the licensed professional.

In New Jersey, two governmental entities create standards in some fashion. The first entity is the courts. Courts deal with and effectively create and implement standards of conduct or, if you will, ethical considerations in the sense of deciding private controversies involving citizens and professionals. Party A sues Party B claiming damages as a result of some infringed right. Either a judge or a jury will make a determination as to whether or not the conduct in question offends the accepted norm. That is one setting which is intended to evaluate individual cases within an individual context. Judicially created standards of conduct tend to establish broad statements which are intended to resolve individualized

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Mr. Harper is Deputy Attorney General, New Jersey Department of Law and Public Safety, Newark, New Jersey.

disputes and as such, in my view, create only generalized ethical norms.

The second source of standards flows from the Legislature through the creation of broad standards in enabling legislation and as implemented by governmental regulatory agencies. In this State alone, there are 20 individual boards or committees within the Department of Law and Public Safety that are charged with the responsibilities to regulate professions and occupations. Briefly, and to demonstrate, the following are the regulated professions: doctors, nurses, psychologists, marriage counselors, pharmacists, optometrists, engineers, architects, planners, dentists, veterinarians, and accountants (both public and certified). Additionally, there are eight other areas where nonprofessionals are regulated as well. These examples do not include other areas of regulated professional activity such as real estate brokers and lawyers.

Professional regulation is in large part predicated upon the principle that the Legislature establishes a set of standards of general application and then, because of the peculiar exigencies of any given profession, that standard must be honed down into the specific areas of the particular profession involved. What are those standards? I could read to you the legislatively established standards, but I do not think that is meaningful. Essentially, every licensing statute boils down to two or three fundamental ethical standards which have been converted into standards for licensee conduct.

The first one is, and I submit that these are the core of ethical standards embodied by law, a demonstration of initial and continuing competence, both to engage in the profession at the entry level and thereafter. In New Jersey, as in most jurisdictions, an individual can be licensed in any of the professional areas that I have indicated to you and upon a demonstration of competence, usually by examination although not always, is issued a plenary license. It is true also in the practice of law. From day one, after the passage of the bar examination or after the passage of a nursing examination or the passage of the examination to act as a dentist or a doctor, that individual by virtue of the grant of plenary licensure is deemed competent to initiate any of the most complex antitrust litigation by simply filing a complaint and pursuing it in the courts. There is no legal prohibition against doing so other than perhaps the fundamental question of a duty to be competent.

Secondly and similarly, any individual physician, a single day after licensure, is legally permitted to perform the most complex heart or brain surgery known to the medical profession. Are there built-in checks and balances in the system to protect against that kind of apparent exposure to incompetence? The answer is thankfully - yes. Query, in terms of ongoing concern, whether or not we are really talking about a fundamental defect in licensing statutes which allows for a complete engaging in, or exercising rights in the regulated profession by virtue of plenary licensure. Query, further, whether some more specialized types of licensure ought be required in the broad based areas of the regulated professions.

With regard to the duty to be competent, the statutes in New Jersey essentially involve two standards. An individual in order to maintain

licensure must avoid one of two things. He must avoid being grossly negligent within a single situation, and he must avoid being repeatedly negligent at the simple negligence level. What are the differences? In essence a single major deviation from accepted norms of practice as well as repeated lesser transgressions from the norm will expose the licensee to disciplinary sanctions. Secondly, the statutory setting in New Jersey essentially requires also that a professional avoid the use or employment of deception, misrepresentation, false promise, false pretense, fraud, etc., - a "fairness and honesty standard" if you will. When you step back from the competence and the fairness standards, I submit to you that the Legislature has established a fundamental set of ethical norms of misleading simplicity. Essentially, in the broadest sense, the licensee must do two things: demonstrate competence and remain competent and be fair, honest and open in dealing with those members of the public who have every right to expect a proper delivery of the services which in point of fact are delivered by the professional.

What about the duty to remain competent? Strangely, most professional societies and professional associations regularly espouse the point that continuing education ought be followed vigorously. Yet when one examines the rule of law in this State, the demonstration of competence on a continuing basis through such things as continuing education requirements arises only in a limited number of areas. It is not by operation of statute or by board regulations common throughout the regulated professions. For example, the Board of Pharmacy operates under a statutory mandate that requires continuing education in a very precise and very specific manner indicating particular numbers of hours that must be pursued over a given period of time. Most, if not all, of the other professional areas do not have that kind of continuing education requirement to remain competent.

All of these comments, I think, are really very general conceptual operatives in terms of meshing standards of performance and what may be termed as ethical concepts. I submit to you that in dealing in this area of ethical versus non-ethical conduct, it does no good to talk in the abstract. In my view the resolution of ethical questions can only be effectively addressed by looking at a particular area or a particular question within the context of a particular regulated profession. Further, I would suggest to you that what may, in some professions be ethical conduct, in other professions and other settings may not be. Standards of operating conduct in one profession may be absolutely appropriate whereas in another they may not.

One of the areas where at present we are experiencing extraordinary difficulty in definition is the area of professional advertising. I think everybody here is at least generally familiar with the line of United States Supreme Court cases starting with Bates and the Virginia pharmacy cases approximately five to six years ago which struck down state statutes that blanketly prohibited the dissemination of truthful information regarding professional fees. The court for the first time defined a First Amendment right in the public to receive information that vitally affects consumer interests. Out of these cases, and out of that set of considerations, a series of other cases have arisen. Take for example, the Supreme Court's decision in Ohralik, a case involving the attack by an attorney on a state

disciplinary proceeding and a set of disciplinary rules which prohibited solicitation. Briefly, the facts involved a typical "ambulance chase" case in which an attorney went directly into a hospital, talked with an individual patient and solicited his retention as counsel for personal injury litigation. Thereafter, he was disciplined under state law for violating an ethical standard prohibiting attorneys from soliciting clients. Bear in mind now we have Ohralik being decided after the United States Supreme Court had decided its Virginia pharmacy and Bates cases holding that a state could not blanketly prohibit the dissemination of truthful information regarding fees. The attorney, in Ohralik, obviously argued that he was doing nothing more than communicating information regarding fees. The Supreme Court held to the contrary reasoning that the face to face confrontation and solicitation violated established ethical norms and the State, through its disciplinary proceeding, had a legitimate interest in guarding against attorney overreach in such confrontation between attorney and client. Therefore, the Court concluded that such solicitation was impermissible and could be blanketly prohibited.

Take that principle, however. Namely, the State has a legitimate interest in establishing a broad based, prophylactic rule to absolutely insure against overreach on the part of an attorney who presumably possesses skills in diplomacy and persuasion. Compare this principle to a situation where an individual wants to make known the availability of his service on a face to face basis, as for instance, with a Certified Public Accountant. What is so terrible about a CPA or an accountant going door to door to businessmen and saying, "Here I am. These are my services and my fees; will you consider retaining me?" The same type of confrontation exists and presumably the accountant would be skilled in the technical aspects of his practice, at least sufficiently to impress a lay client. It would appear, therefore, that the same type of setting for different professionals may well yield different results given the specialized considerations flowing from the individual licensee and the circumstances in which he finds himself.

What is the point of all this? One of the emerg[illegible] areas where I think substantial issues grounded in ethical consideration[illegible] will arise, and will continue to be a focus of attention, is how does the i[illegible]vidual licensee permissibly communicate information to the public. Obviously, everybody would say that you have to be truthful. As long as the advertiser is truthful, it would, at first blush, appear unassailable that such truthful statements cannot per se be prohibited. Take for example an issue now before the Board of Medical Examiners. The Board has a regulation that prohibits the advertising of free services. What is so terrible about the advertising of free services provided, of course, the services are in fact without cost? Why shouldn't physicians and chiropractors be allowed to offer a free examination or a free X-ray? One segment of society might say, of course, such conduct is acceptable. If an individual licensee wants to give away his services, why ought he not be able to do so? Why should there be governmental intervention under those circumstances which prohibits that?

The other side of the coin, however, is that in certain circumstances similar to the Ohralik case, there exists a fundamental capacity on the part of the unscrupulous chiropractor or physician who possesses

superior expertise and knowledge to manipulate the individual patient answering a "bait" ad into a series of unnecessary treatments, tests, or other medical plans - all for the purpose of economic self interest. Thus, to protect against such overreach, a broad, prophylactic prohibition essential for the public's protection is proper. The answer to this argument, however, may well be that such a complete limitation upon licensee speech and action is overbroad and that to the extent fraudulent or deceptive practices arise, they should be addressed by individual prosecution of disciplinary violations after the fact. As I mentioned earlier, this is a current issue in litigation and the ethical-policy clash, which hopefully has been demonstrated, will ultimately have to be resolved in the courts.

On the other end of the spectrum from the subtle ethical policy balance embodied in the Board of Medical Examiner's regulation prohibiting the advertising of free services, are the cases involving flagrant abuse of the professional's license. For example, the Board of Medical Examiners recently disciplined a physician by reprimand and fine for threatening a police officer during a verbal exchange arising out of the officer's issuance of a traffic summons to the driver of a car in which he was riding. The threat consisted of statements made to the officer that if he (the officer) were ever a patient seeking emergency care in the hospital where the licensee practiced, such care would not be forthcoming. Obviously, the utterance flagrantly invaded and breeched any minimal standard requiring proper professional conduct by the status of licensure itself and, accordingly, was prosecuted by the Board and the Attorney General as professional misconduct.

When dealing with ethical questions in the broadest sense, one must not, in my opinion, deal only with the professional's individual relationship to a client, but also with the relationship of the professional to his formal peer group--the professional society. There are presently pending state and federal lawsuits instituted by several radiologists and their professional society challenging a Board of Medical Examiner's regulation which prohibits radiologists from declining to render services (the taking, and reading of X-rays and rendering reports thereon) on the basis of class of licensure. In short, the regulation was adopted after long and tedious consideration by the Board for the purpose of allowing chiropractors access to radiological services for their patients, primarily to differentiate fractures or other types of injury which would preclude chiropractic treatment. The plaintiffs in the action advanced numerous arguments including a claimed undue governmental intrusion into their right to practice medicine. The Appelate Division rejected these arguments and sustained the regulation; however, federal litigation continues.

I mention this case as an example of what I believe to be a need for both the individual professional and his society to evaluate more critically ethical issues. Here is a graphic example of where a licensing Board has said by regulation that the rights of individual chiropractic patients are best served by prohibiting a blanket witholding of services by a class of its licensees. Despite what is clearly a rational and legitimate connection between what the regulation required and a legitimate consumer-patient health concern, these individals and their society have chosen to elevate claimed individual rights to practice over the interests of individual patients.

If ethical obligations mean anything, they must contemplate that, above all else, the interests of the public who is served must not be subordinated to individual self interest of the practitioner or his peer-group society. Where ethical concerns or interest clash, as they inevitably will in a free society, the public's right to be served fairly and competently must remain paramount.

In my view, the future will yield new initiatives by professional regulatory bodies and the Legislature to set standards of conduct based upon fundamental ethical presumptions. The concept of informed patient consent to treatment or to refuse treatment will be broadened to include required disclosure and agreement to fees prior to rendering treatment. In this case, the Board of Medical Examiners has recently established excessive fee review committees in an attempt to address the problem of physician licensees who exact manifestly unconscionable fees. Clearly this regulatory direction reflects the ethical precept that a licensee has an obligation to change fees which are fair and reasonable taking into account the totality of circumstances in a particular case. Equally as clearly, the initiative reflects a rejection of the argument that a free marketplace vis a vis health care professionals should allow the professional to change and collect "whatever the traffic will bear."

The future also promises a full consideration of the issue of whether a licensed professional should be placed under a legal duty to report unlawful acts of his colleague licensees. While such a requirement exists for attorneys, none of the existing professional board statutes or regulations impose this responsibility. Obviously, a conspiracy of silence cannot be tolerated; however, the licensee properly may assert that disclosure and reporting may, in turn, subject him to the possibility of having to defend against lawsuits alleging libel or slander - even though such actions are spurious. At present, legislation has been proposed by the Attorney General which would deal with the question of the duty to disclose unlawful acts, while at the same time provide immunity from lawsuits arising out of disclosures or reporting of unlawful acts.

I have tried to point out that questions bearing the label of "ethical obligations," when viewed in the context of the existing state of regulatory controls, translate directly into the legislative or quasi-legislative process of standard setting. Regulation, whether by statute or agency rulemaking ultimately involves a choice between competing interests or, if you will, competing ethical-value judgments. While the end result in most instances involves a delicate balance between conflicting interests, the paramount consideration must, of course, be in recognizing the public's right to be fairly and competently served by the professional.

Thank you.

ETHICAL ISSUES IN PSYCHOLOGY

Jean Balinky

Psychology has moved from the classroom and laboratory to the status of a profession only in the past 30 years. Consequently, there has been an awareness of the need for an ethical code based on the experiences of other professions, and the need for a code that will apply equally to the psychological practitioner and the scientist-researcher.

The New Jersey Psychological Association, as an affiliate of the American Psychological Association (APA), is bound by the ethical code of the national group. This code, which has been developed over many years, was most recently revised in 1977. Constant examination of ethical issues and revision of the code to meet the needs of changes in the law as well as to reflect changes in the nature of psychological practice have been necessary. A specific example of the former has been the reinterpretation of the law in response to growing demands of consumerism. Advertisement, including information on services offered and fees for those services, was initially proscribed by the APA code. Recent legal decisions with respect to advertisement by other professionals led to major revisions of APA policy with respect to advertising and public pronouncements by psychologists. In addition to the reformulation of policy, dissemination of the new policy to its membership has been a major activity of the ethics committee on the national and state levels.

Changes in psychological practice have caused reexamination of ethical standards. Examples of these changes include such issues as the role of confidentiality in group practice as the utilization of group approaches has increased and diversified. The development of "sex therapies" has raised issues with respect to the use of proxies in such therapies. The Ethical Code of the APA continues to maintain that a psychologist shall not engage in any kind of sexual relationship with a client.

Ethical committees at the national as well as state levels are concerned with the formulation of ethical standards, with the education of the membership to those standards, and ultimately, with the issues of possible violations of those standards by individual members. The policing of the profession is a substantial concern. National and state ethics committees respond to complaints of possible violation, either from the public, or from other members of the profession. Successful prosecution of such cases, especially with the need to assure due process both for complainants and respondents, is a complex, often tedious task making extensive demands on the legal and professional resources of the organization.

Dr. Balinky is Past President and Past Chair of the Ethics Committee of the New Jersey Psychological Association. She is a Professor at the Graduate School of Applied and Professional Psychology, Rutgers University, New Brunswick, New Jersey.

Government control of practice through the process of licensing has been one way of assuring the consumer of psychological services both professionally competent and of ethical treatment. New Jersey has had a licensing law covering individuals who offer psychological services to the public since 1964. This law covers not only training standards, but embodies ethical principles as well. Unfortunately, the resources needed to carry out the exhaustive investigations needed for legal prosecution of suspected offenders are not always available. The New Jersey Psychological Association has supported licensure and has worked for many years to get such legislation enacted. As an organization, it has supported the efforts of the State Board of Psychological Examiners in a joint effort to promote the highest standards of psychological practice.

Prosecution of violators of ethical principles, although it attracts far more attention, is less meaningful than the development of a profession whose members are aware of ethical issues and who can avoid the pitfalls whereby even the most well-meaning practitioner can often be entrapped in unethical practices. The incorporation of education on ethical issues for professional psychologists has been a major concern of those who work in the field of practitioner training. Education of those professionals already in the field is seen as a task for the professional association.

EMERGING ETHICAL ISSUES IN THE DENTISTRY PROFESSION

Harmon R. Katz

The principles of ethics in dentistry center around providing the highest quality of care possible to the public. With recent advances in technology and education, it is reasonable to expect people to be able to maintain their teeth in good health throughout their entire lifetime. In fact, there are many dentists who consider the removal of a tooth that can be saved a breach of ethics.

Historically, dentists never volunteered criticism of another colleague's treatment. One would never consider testifying against another colleague in a judicial or administrative action. Approximately ten years ago the scenario changed dramatically. Not only were members of the profession encouraged to reveal poor treatment, but under the Code of Ethics of the American Dental Association were obligated to do so.

I quote, "Dentists shall be obligated to report to the appropriate reviewing agency instances of gross and continual faulty treatment by other dentists. Patients must be informed of the situation. Dentists may provide expert testimony when that testimony is essential to a just and fair disposition of a judicial or administrative action."

The concern over quality of dental care is of such importance that eight years ago the New Jersey Dental Association initiated a peer review system. Peer Review deals with appropriateness of care and quality of treatment within acceptable dental standards. Complaints may be initiated by dentists, patients, or insurance companies. The complaints are received by the New Jersey Dental Association and forwarded to a local Chairman of a Peer Review Committee for mediation. There are 12 committees spread representatively throughout New Jersey. These are supplemented by six specialty committees to review cases involving dental specialists. Over fifty percent of the cases are resolved at this level. However, if mediation fails, a full committee consisting of three dentists having no less than five years of active dental practice, convene to hear the case. Within thirty days of receiving a complaint the committee must report its decision or recommendation to the State Council on Peer Review.

Peer Review functions very efficiently. One of our top staff people, Mr. Herman Hammershmidt, has been assigned to Peer Review and has performed admirably.

This year alone, one hundred and sixteen complaints have been received. Eighty-three were from patients, twenty-five from dentists, and eight from insurance carriers. Two-thirds of these complaints were forwarded to

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Dr. Katz is Chief of Endodontics at Middlesex General Hospital, New Brunswick, New Jersey. He is secretary of the New Jersey Dental Association.

Peer Review. The remaining third did not fall within the purview of the council. Thirty-three cases have already been resolved, over half in favor of the patients. Almost seven thousand dollars have been returned by dentists to patients.

The State Board of Dentistry, a licensing and disciplinary board which presently falls under the Bureau of Consumer Affairs, also receives complaints from patients. Unfortunately, the State Board has elected not to cooperate and work harmoniously with Dental Peer Review. We hope that the State Board will examine the track record of Peer Review and decide to work with us. This would avoid a great deal of duplication of efforts.

The principles of ethics in dentistry have frequently been altered to avoid conflicts with legal standards. When the U.S. Supreme Court rendered its decision to allow professional advertising, we dropped our ethical objections so as to conform with the laws of the land. Advertising is permitted as long as it is not false or misleading.

Ethical violations are submitted for review to a Judicial Council consisting of twelve members - one from each local component, and a chairman who has been a past president of our association. If there is just cause, a hearing ensues. Accused members have the right to be represented by legal counsel. There is a right to appeal if a member disagrees with the Council's decision.

Most of the complaints the Judicial Council has dealt with involve irregularities in charges to patients and false claims made on insurance contracts related to services performed. Recently, a violater challenged the Council's jurisdiction in a case involving allegedly over-billing and nonperformance of treatment. He was successful in obtaining a temporary restraining order from a court. The judge involved, after carefully examining the matter, removed the restraining order, and the case was able to be reviewed. The potentiality of a court inhibiting the enforcement of our Code of Ethics was a serious concern to our members. The ability to police our own members is one of the basic duties of the Dental Association.

The New Jersey Dental Association has also been active legislatively to insure quality of care to the public. We were instrumental in the passage of the Dental Plan Organization Act which deals with providers of dental care who act as insurers. Prior to this law, many dental insurers lacked any fiscal responsibility and were able to collect premiums without possessing any cash reserves or having any reporting mechanisms. The law now demands that these insurers operate under the same guidelines as any other insurance company in the state.

Just this past year, a dentist who charged premiums and provided dental care to the Retail Clerks' Union, suddenly declared bankruptcy and stranded thousands of patients while holding their dollars. Had this law been in effect, it would have prevented this unfortunate incident.

Our strong Code of Ethics and our resolve to carry out its provisions have made dentistry a more responsible profession, and have given the public the best quality of dental care to be found in the world.

UNLAWFUL OR INCOMPETENT PRACTICE - GUIDELINES FOR WHISTLEBLOWING

Dorothy DeMaio

When we speak of emerging issues, it is apparent that some of these issues are already here. In my mind the one major issue is competency for practice and self-regulation of that practice. We in the professions are constantly bombarded with the criticism that the principle of self-regulation is seriously weakened by the perception that professionals and their associations have not generally shown moral strength and interest in monitoring their own activities. History repeatedly suggests that body of specialists is generally enamored of its own expertise and too jealous to admit its own limitations. Yet, history tells us, in nursing specifically, that nurses organize in an attempt to get registration laws which would protect the public by giving reasonable assurance of safe care.

Herein lies the dilemma that all professions face - a dilemma that has been hidden - a dilemma which has raised the question in the minds of many as to whether self-regulation can ever be effective. The concept of self-regulation is being further challenged by the new order of problems that is emerging daily. As you are aware, ethics deals with the way things should be; giving direction for the way things should be.

Ethical decisions of today will, in a great measure, impact on the attitudes, ideals, and behaviors of future generations.

Kieffer points out that, when taking on the challenge of shaping public ethics, we must accept the fact that ethical decision-making is difficult at best. The majority of people care about getting through the day, the next few days, the next few weeks, and perhaps the next few years, and they care about themselves, their families, their jobs, their neighborhoods, and on rare occasions they worry about their country. Getting them to discuss potential ethical issues is not an easy task. Therefore, we need to engage in ethical theorizing that is responsive to current needs.

Human beings develop their ethics through public debate which then leads to public acceptance of what appears to be right or wrong. The New Jersey Board of Nursing is the only professional board in New Jersey that encourages public dialogue by conducting an annual statewide meeting for the public and professionals to share information and debate the issues.

One of the greatest current needs and one that will continue to concern us in the future is the matter of safe, competent care of the public. Competent practice is an issue that is usually not debated in public. Competency of all health care practitioners impacts on the practice of nurses.

Dr. DeMaio is Dean of the College of Nursing, Rutgers University, Newark, New Jersey and Past President of the New Jersey State Board of Nursing.

This is a particularly difficult problem for nurses.

Ethical dilemmas and stress cause nurses to be in a constant state of cognitive dissonance and have significantly influenced the current shortage of nurses. The research conducted by the board on the factors influencing the shortage of nurses in New Jersey had a phenomenal response: 22,650 of the 38,000 nurses surveyed responded. The major theme in the thousands of comments respondents took the time to write was that as professionals, they could no longer deal with the incompetency of the physicians, other health care providers, and other nurses - so they leave the profession - which of course places more of a burden on those remaining in the system.

Incompetent practice is not necessarily unethical behavior, but it is unethical not to protect the public by covering up incompetency. The individual observing poor practice and its dangers frequently is struggling with "What should I do about the matter?" Logic dictates that a specific situation can be more easily and rationally resolved and the responsibility conflict minimized if there are guidelines for reporting incompetent behavior. Reporting of behavior can be done through structured peer review and other institutional mechanisms.

Perhaps the model developed by the New Jersey Board of Nursing in collaboration with the Attorney General's office might be considered by other health care providers. Guidelines for reporting unlawful and improper activities by licensed nurses were developed as a result of the 1980 annual statewide Board of Nursing conference entitled "Professional Practice and the Public Interest."

The intent of the guidelines is to encourage the reporting of activities of licensed nurses which professional evaluation determines, in good faith, are improper or unlawful. The guidelines not only address unlawful behavior such as drug abuse, alcoholism, drug diversion and conviction for a crime, but they give guidance for reporting patient abuse, major breaches of hospital care, nursing home, or other health care agency practices which have the potential for actual or serious harm to the physical or emotional status of the human being.

We on the New Jersey Board believe that nurses desire and can screen and discipline from within our ranks to assure the public of safe, competent practice. These guidelines have been forwarded by way of a newsletter to all 97,000 registered nurses in the State of New Jersey. These guidelines erase the question of "What should I do about the matter?" The unlawful or improper activities are clearly delineated.

In conclusion, I would suggest that members of the professions can be accountable in regulating their practice. Having a framework of what is reportable and how to report it, whether at the workplace level or the governmental level will minimize the responsibility conflict and increase the awareness and vigilance of members of the professions, thus making them more responsive and committed to the ethics of <u>the way things should be done - the right way</u>.

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ETHICS AND EDUCATIONAL CONCERNS

John Pietrowicz

Teachers generally do not see each other perform. Teaching is an isolated, solitary activity in which the only people to observe teachers at work would be a supervisor or an administrator. Generally speaking, other practitioners do not. As a general consideration what I would like to say here is that teachers, and school employees generally have at this point in their history a feeling that they have been exposed too much, too long and too frequently, either personally or in terms of their clients, the students, to arbitrary and capricious actions by either administrators or local boards of education in the operation of the schools. Teachers today do not look to their professional organization to come up with a set of standards and activities to stick it to them.

When teachers join the New Jersey Education Association, they join the NJEA for mutual aid, comfort, and protection and that is the primary reason they assemble and get together. This is not to say that they are not interested in high standards or high conduct of ethical behavior, but when you come right down to what they consider to be the primary function of their organizaituon, it is not to process charges against the membership.

Therefore, in terms of the specific question that we are speaking to here in terms of linking ethics and improvement in practice, I would be kidding you if I said to you today there is a relationship in teaching or anything that is happening in the public schools that I could relate to the presence of an enforceable code of ethics. There are so many other variables that impact on whether a person is going to be able to teach effectively that the presence of an enforceable code of ethics is, at this point, almost an insignificant factor in the day in, day out working life of a teacher.

During the five-year period between 1970 and 1975, the National Education Association conducted a survey for the number of ethics charges that were filed before their national review body. Now we are talking about a membership of a million and a half people. During that period of time, they received 50 charges, only six of which went to hearing and two resulted in a decision...that is in five years for a million and a half people.

Consequently, as of 1975 we went through an internal review and although we have really not totally withdrawn, we have substantially reduced the scope of national and state code of ethics statements. We still have a basically enforceable code of ethics. There is very limited, if any,

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Mr. Pietrowicz is a Field Service Coordinator with the New Jersey Education Association, Trenton, New Jersey.

enforcement at this particular time partially because they are so general in nature. I think that is probably peculiar to something we discussed in our breakout room earlier in the day that is related purely to the development of this profession of teaching and our development as an organization at this stage in our history. The pendulum may swing and we may get back to those concerns of ethical behavior later on, but I doubt it.

There are several reasons why we got away from intense involvement in ethical behavior and I think they are worth mentioning. We were confused as a profession for many years. When I went into teaching back in 1960, I really thought that the code of ethics of the education profession which was adopted by the National Education Association was the code of ethics for the entire education profession to which every practitioner subscribed. The fact of the matter is that the only people it was applicable to were people who belonged to the organization. It took us a long time to really come to recognize the reality of what we were dealing with and who we could impact.

Second, licensure is really, from our point of view, outside our scope to the extent that we would be able to influence it. If there is an area or two that we are interested in expanding our influence over, one is the area of licensing. We don't think that the teaching practitioner has the impact on the N.J. State Board of Examiners or the State Board of Education that it should have. Basically, people from outside the profession are determining the standards that determine the entry level into our profession. We have not gotten to that yet.

Certainly in going to the next point, hiring or firing of employees is totally out of our hands. As a matter of fact, we are chagrined at the manner in which nontenured teachers are let go today and it is a shame, in a way, that people who are actually evaluated to be outstanding teachers are let go for no good reason under the status of the law in New Jersey. It does not take any reason to let a good teacher go. Again, why should we be in the business of finding reasons why we should be getting rid of people when we see so many injustices committed against our members.

If there is one single major factor that has had an effect on the NJEA with its 1100 affiliates and 110,000 members, it was the passage of the negotiations law in 1968. That law placed the legal obligation of representing our people without discrimination in negotiations and in grievance adjudication on the organization. From that point on our role was determined since we cannot be both prosecutor and defender. We in a sense know who we are and what obligation we carry. We represent and we defend.

The exclusion of ethics activity, however, does not exclude a legitimate interest in improved performance. We feel the two areas which are much more important in this respect are greater influence in licensure and professional development through in-service training and it is here that we are placing our concentration and efforts.

PHARMACY ETHICS...PROFESSIONAL IDEALISM AND REALITY

Louis Feld

Ethics is alive and doing well in New Jersey. For instance,

> We hold that an employee has a cause of action for wrongful discharge when the discharge is contrary to a clear mandate of public policy. The sources of public policy include legislation, administration rules, regulations or decisions, and judicial decisions. In certain instances, a professional code of ethics may concern an expression of public policy. For example, a code of ethics designed to serve only the interests of a profession or an administrative regulation concerned with technical matters probably would not be sufficient.

This is a direct quote from the Pierce vs. Ortho Pharmaceutical Corporation case recently decided by the New Jersey Supreme Court. Grace Pierce, a physician employed as Director of Medical Research, was fired because of a conflict in a medical viewpoint concerning the advisability of testing a drug on certain human beings, children, and older people due to risk.

New and important rights for employees are clearly established in this landmark case. It is particularly important to pharmacists and other licensed individuals who always serve many masters. The masters they serve are first and foremost the patient, the state which governs them due to licensing statutes, the federal government which controls by virtue of drug regulatory statutes and other controls, and of course the employer. We always believe, and in fact strongly urge, that the association's code of ethics should always have some strong value of guidance to our members, and in fact to all pharmacists. Was our patient better or worse off when there was less government and more non-governmental controls, either individually or collectively?

As consumers demand more and society changes more rapidly, ethics become far more important than ever before. A code of ethics for a profession represents an important document which members must consider in their everyday practice. As often happens, the ethical standards have been involved indirectly to legal verdicts.

For example, in the Oddo vs. Sandoz, State of N. Y. Supreme Court, Erie County:

This case involved a pharmacist who refilled a drug used for migraine prophylaxis for a period of some two years although the drug package insert

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Mr. Feld is Past Chairman of the Pharmaceutical Standards of Education Committee of the New Jersey Pharmaceutical Association, President Elect of the New Jersey Pharmaceutical Association, and employed at Hoffman-LaRoche, Bridgewater, New Jersey.

cautioned, "There must be," it stated, "a medication-free interval of three to four weeks after each six-month course of treatment." Long-term clinical experience with the drug produced reports of severe adverse reactions to heart and lungs.

During these years that the patient received treatment from her physician, she received limited refill prescriptions, but since the prescriptions were refilled continuously, her drug ingestion continued uninterrupted. During it all, the pharmacist did not make contact with the physician, nor did he stop the patient's use of the drug in accordance with package insert recommendations.

The patient developed endocardial fibrosis and filed suit against the pharmacist, physician, and manufacturer. Documents were presented to support her position that the pharmacist had breached his duty to her. Among these were the preamble of the Apha Code of Ethics which is considered the basic guide and document for American pharmacists. This states, "These principles of professional conduct for pharmacists are established to guide the pharmacist in his relationship with patients, fellow practitioners, other health professionals and the public." Also, Section 1 of the Code, "A pharmacist should hold the health and safety of patients to be of first consideration: He should render to each patient the full measure of his ability as an essential health practitioner." Also, Section 3 of the Code: "A pharmacist should always strive to perfect and enlarge his professional knowledge. He should utilize and make available this knowledge as may be required in accordance with his best professional judgment."

One way of looking at the developments just described is that legal action consistent with a provision of a professional code is society's way of endorsing it. Since the majority of the profession adheres to the code, then it is mandated for all.

The term "ethics" has a number of variable meanings depending on its context. Each of us has an individual code of ethics developed over the years through personal experiences in many settings that tell us to live by "yes" or "no." Yes to everything good, and no to everything bad in any given situation. Likewise, codes of professional ethics have evolved over many years of professional experiences in a variety of settings or situations.

Today the pharmacist could easily create the impression of being under a role conflict of professional and business man. The professional "ought" of pharmacy versus the economic "must" of a successful entrepreneur.

In the preeminent mid-nineteenth century novel, Madame Bovary, the author describes the most famous, or perhaps infamous pharmacist, Monsieur Homais...as abandoning his principles, sacrificing his dignity to the weightier interests of his business.

In addition to the balancing of these two roles, pharmacists have to assign priorities, which because of the changing aspects of professional pharmacy, become even more difficult to determine.

Shakespeare depicts the apothecary in Romeo and Juliet when Romeo says:

> I do remember an apothecary
> And hereabouts he dwells, which late I noted
> In tatter'd weeds, with overwhelming brows,
> Culling of simples; meagre were his looks;
> Sharp misery had worn him to the bones,
> And in his needy shop a tortoise hung.

Why was the apothecary in Romeo and Juliet so impoverished? Was this a reflection of the times, or was this a plot devised to give the poverty-stricken pharmacist an excuse for selling the fatal potion to Romeo?

Pharmacists, like other health care professionals, find themselves possessing knowledge and judgmental skills not generally available to the public. This knowledge is considered so important that a whole system of licensing and other regulations have been mandated so that the public may be kept from harm and its health improved. The pharmacist, by practicing, can be understood to have entered into a contract with society to utilize this special knowledge wisely and morally.

Let's tackle this situation. A middle-aged man whose condition you know well comes into the pharmacy with what appears to be an entirely inappropriate prescription. You call the prescribing physician who declines to make a modification. "I know what I'm doing, fill the prescription," the doctor demands, obviously irritated. What can you do? It is far too complex and difficult to go into here, especially since it will vary with the circumstances.

Consumers can more easily observe the managerial role than the changing professional demands of the pharmacist. The profession of pharmacy is beset with many complex problems and issues. It is sufficient to say that most, if not all, of the problems and issues currently on the pharmacy scene are either directly or indirectly related to ethical judgments.

For over 2,000 years one of the goals of philosophers has been to find an ethical statement so general that it can be used to justify all other ethical statements. As one might expect, philosophers have not reached universal agreement. But one I consider viable that can satisfy human needs is the one that follows, which is called the priceless ingredient:

> The priceless ingredient of every product in the marketplace
> is the honor and integrity of him who makes it. Consider
> his name before you buy.

EMERGING ETHICAL ISSUES IN THE CERTIFIED PUBLIC ACCOUNTING PROFESSION

William D. Schoolman

To understand the emerging ethical issues facing the certified public accounting profession, a brief history is necessary regarding some of the ethics and self-regulatory changes which have taken place in the profession over the past decade and the reasons why such changes have occurred.

In the past several years, the certified public accounting profession has come under increasing pressure from Congress, the Federal Trade Commission, the Securities and Exchange Commission (SEC) and other governmental agencies not only to change many rules in the American Institute of Certified Public Accountant's (CPA) written Code of Ethics but also to change the way the profession enforces its Code.

At least part of the impetus behind the Congressional and SEC scrutiny of the profession resulted from extensive publicity which was generated during the late 1960's and early 1970's regarding large national CPA firms who were successfully sued for culpability or negligence relating to several major audit failures dealing with the Equity Funding and Student Loan scandals and the Penn Central bankruptcy. Lawsuits for other less-well-known audit failures were also successfully brought.

The institution of major lawsuits a decade ago against the large accounting firm was a clarion call to the profession that a changing environment required changes in the mode of practice by members of the profession and a recognition that if accountants were to be considered the third profession in relationship to doctors and lawyers, they would also be held increasingly accountable as are doctors and lawyers for failure to exercise due professional care.

The publicity generated by the audit failures led the House of Representatives and the Senate as well as the SEC to investigate the accounting profession and to inquire whether some type of federal regulation would be in the public interest. The profession was faced with the option of either structuring a system which would increase the effectiveness of the quality controls utilized in public accounting practice to substantially diminish the chances that audit failures could occur or to have the federal government implement a series of new regulations which would attempt to have CPAs registered by the federal government and placed under the supervision of the SEC.

The profession chose the course of affirmatively making the necessary quality control changes. These changes resulted in the formation of an independent public oversight board creation at the American Institute of

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Mr. Schoolman is a member of the Professional Ethics Division of the American Institute of Certified Public Accountants, New York, New York.

CPAs, the national professional association for certified accountants, of an SEC practice section of the AICPA Division of CPA firms, as well as a peer review section and a general tightening up by the individual accounting firms of their own quality controls relating to audit activities.

At the same time that Congress and the SEC were scrutinizing the profession from a technical standpoint, the Federal Trade Commission began an investigation of all major professions to determine whether the code of ethics of the various professions contained anti-competitive rules. The emphasis of the FTC's inquiries dealt with the ethics rules which prohibited advertising, personal solicitation and encroachment. The accounting, medical, legal and other professions generally had absolute prohibitions in their respective ethics codes against such activities.

As a result of the FTC involvement, many of the professions have substantially modified their codes of ethics. Two years ago, the members of the AICPA voted to delete all prohibitions against advertising, solicitation and encroachment except for activities which are false, misleading or deceptive. Considering that such activities were previously prohibited and had been proscribed for the most part since the formal organization of the profession shortly after the turn of the century, these changes were no small matter to certified public accountants. As the leading professional organization, the AICPA took a major positive role in suggesting to its members that the code rules be modified.

I have thus far talked about increasing litigation or threats of litigation being faced by CPAs, the threat of government regulation and the drastic change to the profession's ethical rules dealing with competitive practice. These activities have forced CPAs to change the way they conduct their accounting practice. Adding to this, however, is a fourth factor which has also tended to increase the pressure on CPAs.

Prior to the deletion of the advertising-solicitation rules from the profession's ethics code, the major self-regulatory or enforcement activities of the AICPA and the ethics committees of the various accounting societies which operate in each state, rested in the behavioral standards area. It was felt by the profession that the greatest danger to the public resulted from improper competitive or other behavioral type activities which might be committed by our members. Enforcement activities against members who violated the profession's rules in the technical standards areas, while considered important, were not previously emphasized.

What do I mean by enforcement of technical standards? The accounting profession has an extensive body of literature which provides direction to a certified accountant as to how an audit should be conducted, what technical procedures should be followed to determine if the financial statements of a company are fairly presented and so on. A unique aspect of the accounting profession is that members of the AICPA, as part of their membership obligation, are required to follow the accounting standards and principles in performing an audit. Failure to do so might not only result in legal liability, but also constitute a violation of the AICPA's Code of Ethics, which could result in disciplinary action by the member's professional organization.

With the increasing attention given by the government and the public as to how CPAs technically perform audits, the profession has begun to emphasize in the ethics enforcement area activities dealing with a member's violation of technical rules which, as I have already mentioned, constitute a part of the Code of Ethics. It is becoming increasingly accepted in the profession that it is not enough for a CPA to be subjected to legal liability if technical rules are violated, but also to be subject to ethics charges.

As an example of the changing emphasis, the AICPA has agreed with the major federal agencies in Washington to affirmatively seek out audit reports of federal grant recipient agencies prepared by independent CPAs. By affirmatively seeking out, I mean the Ethics Division of the AICPA has begun a major program in which audit reports are picked at random to be reviewed for technical adequacy. Prior to this, the Ethics Division did not act on a matter unless a specific written complaint or other information was received which led the Division to believe an ethics violation may have taken place.

Accountants are increasingly being asked to consider what their role and responsibility are in the financial system of the country. It has always been accepted by the profession that, in certifying the fair presentation of a client's financial statements, CPAs have an obligation to the public. The public would include those who rely on the accuracy of the certified financial statements, such as investors, lenders and insurers. In general, however, I believe that up until approximately twenty years ago accountants felt that their primary responsibility was to the client entity which engaged them. The courts also generally held to this view.

The SEC has for some time argued that accountants have a major responsibility to protect the public; that CPAs should be involved not just in certifying the fair presentation of their client's financial statement, but should also be responsible for "policing" many of the financial activities of their clients and reporting to the appropriate governmental agency or other appropriate parties when questionable practices take place. Some have described this as "whistle blowing."

The question of whistle blowing is not restricted solely to the audit area. It was previously suggested that accountants should be required to notify the Internal Revenue Service of any questionable deduction taken by a client, even when the CPA believed the deduction was appropriate. Now, accountants are required to obtain from tax clients, documentation which adequately supports, for example, a client's various business deductions. The profession's literature points out that failure to obtain adequate documentation would preclude the CPA from permitting a given deduction. If the tax client insisted that unsupported deductions be listed, the practitioner must decide whether withdrawal from the engagement is appropriate.

One of the most important emerging ethical issues facing the profession is a reconsideration of what the role of an accountant is, to whom and for what they are responsible, and finally, when these questions are answered, what the specific ethical and legal obligations should be. The answers to these questions are philosophically, ethically, and legally very difficult.

All of these thorny issues are present regarding the question of "whistle blowing." Since CPAs have responsibilities to the public as well as the client who has engaged them, it might appear at first blush to be obvious that CPAs should be required to blow the whistle on clients who may be committing illegal acts, falsifying financial statements, wrongfully avoiding taxes, and so on. While the theory may be fine, the problems in application do not lend themselves to simple resolution.

Some of the many attendant problems or questions which must first be answered in the whistle blowing area before a practical approach can be considered are:

1. To whom should the CPA bring his information of allegedly wrongful client activities? In the case of an audit, should the information be provided to the government, the stockholders, insurers, creditors? If the information should be given to the creditors, must it be provided to all creditors or only to some of the creditors? In practical terms, how should the information be conveyed?

2. Should the information be divulged only regarding public companies subject to SEC rules and regulations or should it include private companies as well? If private companies are included, should they be at least a certain minimum size or should the whistle blowing extend even to mom and pop stores? What is the cognizable social interest in extending such a concept or requirement to private versus public entities.

3. At what point or for what improper activities should the information be divulged. When the client is committing a felony? Perhaps when the client is committing only a misdemeanor? How is the CPA to know when an activity is sufficiently bad to warrant public disclosure? Are we to hold the CPA responsible for being both a judge and jury? Are we going to say to a CPA that he must also learn to practice law by determining when a client's activities are sufficiently bad to warrant public disclosure?

4. What personal legal liability will CPAs be responsible for? Individuals are, of course, held legally responsible for committing libel and slander. Should CPAs be held personally liable if they release information publically and are wrong in their judgment? A slightly different question is whether CPAs should be held responsible for the direct effects of releasing information if it turned out that they were incorrect regarding a client's allegedly wrongful activities. Will the CPA be held responsible for the client's lost business and damage to reputation? Will they be held liable to stockholders if the price of the client's stock goes down as a result of releasing the information? This very question was raised regarding Ray Dirks and the SEC in the Equity Funding matter. The same question is now being raised in a lawsuit against Alexander Grant, one of the larger CPA firms.

5. If CPAs are made to serve as whistle blowers, no matter how limited or restricted the definition of their responsibilities in this area, what would happen to the cost of professional liability insurance? As in the case of doctors and lawyers, the cost to CPAs of liability insur-

ance is rising to astronomical levels. How high would the cost of professional liability insurance rise if CPAs were required to undertake a whistle blowing responsibility?

6. If CPAs are required to be whistle blowers, should the responsibility extend only to those who are in public practice or should CPAs not in public practice be included as well. Over forty percent of the AICPA's membership are not in public practice and do not work for public accounting firms. These forty percent work as employees in corporations, government, and academia. If nonpracticing CPAs are required to be whistle blowers - let us say a CPA is an executive of a corporation - why should not every other non-CPA executive also have the same responsibilities?

7. The AICPA's Code of Ethics prohibits member CPAs from releasing any confidential client information obtained in the course of the professional engagement. This rule was placed in the Code not for the purpose of permitting CPAs to hide the wrongful acts of their clients, but to assure the integrity of members; to assure the client that the CPA they engaged would act professionally by not divulging confidential or proprietary information to other parties. While the AICPA's Code could be changed, the rationale for the rule would still exist.

On a philosophical and emotional level, when was the last time you went around telling people what your annual earnings were? Would you want others to publicize this information? The answer is obviously "no." But if a client, whether tax or audit, could not trust his accountant to retain confidential information, it is likely that confidential information necessary for the CPA to properly perform the engagement will be intentionally withheld by the client. The effect of this may be to bring about just the situation which was intended to be avoided: harm or damage to the public.

It is clear that the role and responsibilities of certified public accountants are changing rapidly. These changes are obviously a function of a changing environment and economy. As the impact and influence of CPAs on society become increasingly recognized, it is likely that the various questions posed at this conference and raised in this brief talk will be considered more and more thoughtfully both in and out of the accounting profession. It is equally clear that there are no simple answers or solutions.

EMERGING ETHICAL ISSUES IN SOCIAL WORK

Stephen Hecht

I am here today representing the Social Work profession through the medium of its professional society, the National Association of Social Workers (NASW).

All of us on this panel share common concerns despite the diversity of our occupational endeavors. We provide specialized services, ostensibly as experts, to the lay public with the objective of increasing the quality of life enjoyed by our clientele. As an organized professional body, we share other objectives: increasing the quality of life of our fellow practitioners; and promoting the quality and effectiveness of our practice.

Social work has had codified procedures for adjudicating grievances for over twenty years under the aegis of the Professional Standards Division of the NASW. These procedures are based on two essential documents which derive from the values of my profession: a Code of Ethics and Standards for Social Work Personnel Practices. The handling of complaints of and against members of the profession is an activity designed to promote the quality and effectiveness of practice.

Three types of complaints may be accepted by the Committee on Inquiry (COI) for study and adjudication:

1. Complaints of violations of the Code of Ethics by a member of NASW

2. Complaints of violations of personnel practices by an employer of NASW members

3. Complaints against employers for imposing limitations on or penalties for professional action on behalf of clients.

Members of NASW are pledged, by their specific affirmation on joining the Association, to submit to proceedings for any alleged violation of the Code of Ethics.

Responsibility Conflicts

Historically, social work has been practiced most often in agencies. In these instances the practitioner's employer and clientele may represent different needs systems, and may demand differing needs systems and loyalties. The Code of Ethics notes that the social worker has obligations to clients and employers. When the obligations are in conflict,

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Mr. Hecht, M.S.W., A.C.S.W., is Chair of the Committee on Inquiry, National Association of Social Workers, New Jersey Chapter. His office is in the Garden State Medical Arts Plaza, Holmdel, New Jersey.

the practitioner, the client, and the employer may be in jeopardy.

By contrast, there are instances where the employer and client are one and the same, as in private practice. On the face of it, potential conflicts are thus minimized. We are all familiar, however, with circumstances in which one practitioner may exercise "professional judgment" differently from another, and perhaps maintain a proprietary relationship longer than would seem justified in a colleague's opinion.

Conflicts in responsibility also develop around colleagial relationships in other ways, as in instances where having sought consultation, a client may prefer the consultant to provide service rather than the original practitioner. Can we be respectful of colleague-client relationships and withhold service from someone who wishes our help? What is "ethical" in this situation? To whom do our loyalties and "first considerations" belong?

Paternalism

Issues of paternalism emerge in a variety of ways. The Code of Ethics, the existence of The Committee on Inquiry itself, the procedures for study and adjudication, the institutionalized supervision process in social work, and relationships with employing organizations all give rise to charges by professionals that the autonomy of their practice is under attack.

Additionally, clients often raise the cry of paternalism when they believe their rights to self-determination are infringed. At times, serving clients with devotion, loyalty, and determination has led practitioners to short circuit the vigor with which clients are informed of the risks and obligations associated with services to them.

Whistle-Blowing

The Code of Ethics states, "The Social Worker should take action through appropriate channels against unethical conduct by any other member of the profession." This is perhaps the arena in which the lay public is most righteously indignant with respect to all professional practitioners. "They always stick together." is the accusation leveled at professionals, with the implication that no matter what the case, the interest of the consumer is secondary to the interest of the profession. This is probably less true than most lay persons would know. In my own profession however, there are certain limitations imposed by the adjudication procedures which require more than mere knowledge of unethical conduct in order to file a complaint. Additionally, the distinction between incompetence or low levels of competency and ethical behavior are often blurred. While there are provisions in my profession for dealing with practitioners impaired by alcoholism, there are none for handling situations in which impairment may be due to neurological or psychiatric disorders or other substance abuse without the complications of alcohol involvement.

The issues raised here are but an infinitesimal portion of those facing social work and other professions as well. With the realities of a healthy and vociferous consumerism to spur us on, to "keep us honest" as it were, we will eventually come to grips with these issues or we will, noble intentions notwithstanding, simply outlive our usefulness and the public tolerance.

STANDARD SETTING AND ANTITRUST ISSUES: THE ENGINEERING SOCIETIES AND THE PUBLIC INTEREST

Hedvah L. Shuchman

A recent brief submitted to the U.S. Supreme Court by the National Commission of Health Certifying Agencies states: "Self-regulation in the public interest includes the duty to provide procedural safeguards to ensure high ethical standards...Prohibitions against conflicts of interest are one such important ethical standard...A further source of the duty is the responsibility of professionals to avoid conflicts of interest. This stems partly from their professional responsibility to use knowledge objectively and their responsibility to serve the public." Professional engineering societies which have failed to guard against conflicts of interest in the process of setting industrial standards have been the subject of recent antitrust suits.

By invoking antitrust legislation against professional societies, the courts have indicated that these organizations should be treated like businesses since it is their considerable economic influence which makes the conspiracy effective and possible. New legal interpretations of the status of professional associations is likely to have a profound effect on the conduct of self-regulation in these professions.

Regulating the professions has always been a concern of government. Traditionally the state spells out the duties of the professional and in return for an agreement to perform these duties, the state grants the professional the right to collect a fee for service. The issue of certifying who is a professional, by establishing the conditions and content of professional training and practice, traditionally has been the jealously guarded domain of the professions.

There have been cyclical efforts to constrain and contain self-regulation in the professions. Sometimes the pressure to reduce professional autonomy has come from angry influential clients, other times from competing professionals or government authorities. Any efforts to remedy poor standards of professional conduct in the time of Hammurabi involved the eye for an eye philosophy of professional regulation: if the patient dies after surgery put the surgeon to death; if the building falls causing someone to die, take the life of the builder. Contemporary expressions of this doctrine involve cutting off of a professional's livelihood instead of his head, as for example, disbarment of lawyers, defrocking of priests and so on. But the populace and the courts are restive because severe discipline of professionals by their professional organization has been infrequent despite rather serious evidence of malpractice or unethical behavior.

Clearly there are problems involving value decisions with grave

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Dr. Shuchman is at the Center for Technology Assessment, New Jersey Institute of Technology, Newark, New Jersey.

economic impacts which pose difficult and sometimes unresolved conflicts within the professions. In previous research, I examined the major components of the self-regulatory system of the professions of law, accounting, and medicine. I found these professions in undisputed and firm control over their professional work. Professionals and their organized associations select the committees which set the conditions for educational accreditation (size of class, curriculum, relationships with other branches of higher education), the requirements for licensing, the standards for continuing education, the requirements for specialization certification, and conditions for the relationships with other organized professionals.

This review has led me to the conclusion that self-regulation is not functioning well. Due to many unresolved questions, including what constitutes unprofessional conduct, discipline of the professions is inadequate and fails to satisfy the public or the administrative agencies and the courts.

The danger to the professional societies, in addition to the cost of litigation, is that government could step in and relieve them of their independence and autonomy.

Examination of the issue of standard setting raises several ethics-related questions. What is the professional society's responsibility for the objectivity and reliability of industrial standards set by the organization? What should be the role of the professional society in supervising the conduct of members who are voluntarily engaged in developing standards issued by the professional organization? Most experts involved in voluntary standard setting have an inherent conflict of interest, since they have acquired their expertise in the service of firms engaged in manufacturing or developing processes and materials similar to the new market entries for which they are setting standards. How can the professional organization protect the public interest in standard setting?

The initial development of industrial standards or "engineering standards" came about as a result of their early use as a means of ensuring interchangeability of components of manufactured assemblies. There was a crusade for standardization in the 1920's led by Herbert Hoover who was then President of the American Engineering Council of the Federated Engineering Societies. Later as Secretary of Commerce and then as President, Hoover developed the standards-setting process to its current level of industrial importance.

There are more than 400 non-governmental organizations in the United States developing standards, in addition to governmental organizations producing standards and specifications for defense purposes, for the General Services Administration, for other federal agencies and state governments. The annual cost of producing standards has been estimated at one billion dollars. In general, the experts agree that industrial standards are best set by the private sector. However, there are situations in which standards may be used in ways that are contrary to the public interest.

The case, which we will consider, will be heard by the Supreme Court this term and involves an experienced standards developer, the American Society of Mechanical Engineers, and a new equipment developer, the Hydrolevel Corporation. The ASME is appealing a decision that finds it guilty of antitrust violations. It should be noted that the case is not unique.

In 1969 the Douglas Fir Plywood Association was found guilty of setting an unfair standard which resulted in the bankruptcy of a firm which manufactured a new type of plywood. Another case, which was finally resolved before a suit was filed, involved an invention of an automatic gas vent damper introduced by a small firm. A gas appliance standards committee sponsored by the American National Standards Institute tried to prevent the invention from coming to the market.

The summary of the facts in the current case is drawn from a friend-of-the-court (amicus curiae) brief filed with the Supreme Court during the week of October 23, 1981: Hydrolevel Corporation (Hydrolevel) made safety devices to protect the public against personal injury and death from exploding boilers.

The American Society of Mechanical Engineers (ACSME) conducts a process for establishing and interpreting standards for boilers and 400 other devices. These standards are relied on by the public, and incorporated in state legislation as impartial and objective evaluations of quality. In 1971-72, two ASME members were selected by ASME to interpret standards. They were employed by competitors of Hydrolevel, and it has been found that they intentionally used their positions in the ASME program to drive Hydrolevel out of the boiler system device business. The two ASME members were T. R. Hardin, Executive Vice President of Hartford Steam Boiler Inspection & Insurance Company, the country's leading seller of boiler insurance to the industry, and John James, Vice President of Research of McDonald & Miller, a corporation manufacturing up to 85% of the float cutoffs that were directly competitive with Hydrolevel's probe device.

Together these men secretly drafted a letter to ASME requesting a code "interpretation." The ASME "answer" was written by Hardin but signed by Mr. W. Bradford Hoyt, an ASME official who routinely signs such letters without supervising or reviewing the conditions of their preparation or their content. This misleading letter was used by McDonald and Miller to disparage Hydrolevel's product to the trade. Hydrolevel lost considerable business, estimated to range from $2 to $7 million. When the facts were made public by a reporter for the Wall Street Journal, ASME's professional practice committee conducted an official investigation and circulated a resolution to its 90,000 members through its official magazine, Mechanical Engineering, and through other means, stating that the Professional Practices Committee investigated the entire incident and found no basis for consideration of the issue. In March 1975, Hydrolevel's concern received attention from the United States Senate before a Subcommittee on Antitrust and Monopoly. John James admitted he had destroyed relevant and material documents. The Court of Appeals concluded that ASME did not maintain a serious systematic program to prohibit, investigate, or discipline conflict of interests. Hardin and James were never disciplined by the ASME. On February 14, 1979, a jury sitting in the United States District Court for the Eastern District of New York found ASME to be a co-conspirator to an

unreasonable restraint of trade in violation of the Sherman Act. On November 25, 1980, the judgment of liability was affirmed by the United States Court of Appeals for the Second Circuit.

The ASME lost the case in that court because it failed to demonstrate that it had set up structures and procedures which would satisfy the technical interests in competence, the public interest in objective judgment of quality, and the antitrust interest in avoiding and excluding firms from the market. The ASME had not safeguarded the activities of its standards committee against conflicts of interest.

The court found that the ASME's internal review procedures were inadequate, and held the organization responsible for the activities of its members. It also found that there was a conspiracy to drive Hydrolevel out of business and ASME intentionally participated in that conspiracy. The court's judgment is based on the fact that state legislatures accept the statements of the standard setting organization and incorporate codes into state law. The public expects standards to be free from conflicts of interest.

The issue in the Hydrolevel case goes beyond that case; areas such as genetic engineering and nuclear technology are extraordinarily sensitive and will involve the activities of standards setting organizations. Many individuals will be involved in the decisions in these technical areas - researchers, educators, volunteers, entrepreneurs, professors, and consumers. The law holds the standard setting organization responsible for the conduct of all of its agents.

According to court, "Imposing liability on the professional organizations will induce greater care to prevent misconduct by agents occupying especially sensitive or responsible positions."

Is a professional society equipped to enforce an ethical code for all these agents? What kind of internal review procedures would be appropriate? If the law holds the society responsible, standard setting organizations may reduce the number of reviews in order to minimize the involvement of agents who create liabilities. Who then will set standards?

Standard setting is performed as a service to the public and involves experts whose expertise or employers may create interest conflicts. The standard setting organizations are responsible for the acts of those who serve on their committees. Procedural safeguards against conflict of interest are ethical standards. Professional organizations insist on autonomy in setting and enforcing these standards. And yet the professional organizations have failed to confront these issues, and public confidence in standards set by professional organizations is in some jeopardy.

The task of drafting ethical standards which will both meet the court's requirements and be approved by the membership of the professional societies is proving a difficult one. It is a process that may affect the practice of engineering and architecture, the availability of engineering and architectural services, and the regulation of these professions and their work.

These cases also have broader implications. The amicus curiae brief submitted in the Hydrolevel case by the National Commission of Health Certification Agencies has warned its member agencies: "Every certifying agency is a standard setting organization, because it decides which individuals obtain certificates that are used as credentials in the job market... because current holders of certificates participate in the certification process, there is always the potential for conflict of interest abuse..." If the Supreme Court decides the Hydrolevel case against the ASME, the decision can affect any group which is governed by a licensing or certifying organization.

Such court decisions may signal the advent of significant changes in the process of self-regulation in the professions. They are consistent with Professor Milton Friedman's justification for the free-market approach which "permits the customers and not the producers to decide what will serve the customers best."

HOW CAN LINKS BETWEEN ETHICS AND PRACTICE IMPROVE?

David Price

On the question of how links between practice and ethics can be improved, it occurs to me that my best shot to be helpful is to tell you something about what I do and why I do it the way I do it.

I am far more interested in what Dr. Callahan calls "dilemmas of principle" than I am in what he calls "dilemmas of virtue." Dilemmas of virtue have taken a lot of the attention throughout this day's conference. These are dilemmas where it is clear what ought to be done, but "the flesh is weak." I am more interested in the kinds of dilemmas in which it is not at all clear what ought to be done. I think this second kind of issue abounds in medicine.

I take very seriously the fact that I, though steeped in the ways of the academy, am involved in professional education. Medicine is not a scholarly enterprise; it is an activist enterprise. Physicians do things; they change things out there in the world. I think the same thing goes for nursing and indeed most of the professions that we talk about. These are practical arts. I try to take that seriously.

Part of what that means is this. Instead of a bookish enterprise utilizing and calling upon and teaching about the three-thousand year history of academic ethics in our culture, I teach clinical skills. I teach how to make ethical decisions, particularly decisions that are embedded in very, very complex decision networks. Consider a situation of a thirteen-year old girl in the hospital newly diagnosed with diabetes. The challenge is to devise a treatment plan that will work for this girl, not only while she is in the hospital, but when she goes home and over the next few years. That treatment plan involves an enormously complex set of decisions and embedded in it are all sorts of ethical issues particularly if this girl is a typical teenager. To be sure, there are certain formal concepts and distinctions which we can draw from the scholarly enterprise of ethics. The principle of such selection is utilitarian. I draw from formal ethics only that which may be added to the little black bag of clinical tricks that we hope doctors will make a part of their armamentarium. Fundamentally I am teaching clinical skills.

A profession has boundaries; there are turf issues. A profession defines itself over against other enterprises. I take that very seriously. It is necessary for the professional outsider to become a part of the professional context. I am not a physician, and will never be a physician, but it has been important for me to go and live with the physicians on their turf. I have my office in the hospital. I have deliberately

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Dr. Price is Director of Health Care Humanities, Department of Pediatrics, College of Medicine and Dentistry of New Jersey, Newark, New Jersey.

moved my entire program into the Department of Pediatrics. I do my teaching in the wards and nurseries. I utilize the modes of learning that are indigenous to that place. I teach, not in the seminar settings common to my own graduate education, but on bedside rounds and in clinical case conferences. I seek to publish in the journals of medicine and nursing, not in the journals of philosophy. That is what I mean by taking seriously the professional boundaries.

Early in the history of ethics teaching in my medical school, before I came there, my predecessors did things differently than I do now. In the words of our president, they "popped up" here and there in interesting places and at strategic times, making talks and commenting on ethical dilemmas in medicine. Now that was fine as a way of showing the flag and getting the enterprise underway and creating some kind of visible presence for the humanist in the medical arena. However, that is not good enough for a mature enterprise. I believe you do not do anything so audacious as to influence the way in which would-be physicians think by "popping up" and singing your song, however seductively, and then disappearing. I think you do it by becoming a part of the faculty responsible for one of the key socializing experiences. I think you do it by building into an integrated, clinical curriculum the concerns and resources of the humanities. I have sought to do that by becoming as fully as possible a member of the Department of Pediatrics, one of the clinical departments, and taking my place as a part of that faculty. I will never "go anywhere" in the academy, in terms of my own specialty, because I have cast my lot with the health care people, not the humanists. I do not play with the ethicists; I play with the doctors and the nurses.

"A key socializing experience" - what is that? Within the context of undergraduate medical education (by that term we mean the students who have completed their baccalaureate degree and are now in medical school working towards their M.D. degree), a key socializing experience is one of the intensive courses in the third year of the medical curriculum in which the students spend fifty hours a week for eight to twelve weeks in the hospital on pediatrics, surgery or another of the basic medical specialities. This is the first time they put on the white coats and hang stethoscopes around their necks and go do physicianly things. <u>That</u> is where it counts.

I make an analogy when I talk to the students between ethical decision making and another kind of decision making which they are very self conscience about learning in medical school, namely, diagnostic decision making. I remind them that they readily acknowledge that precision and rigor, e.g., following certain logical rules of exclusion and categorical thinking, is very important to making correct diagnoses. Precision and rigor is critical to ethical decision making in just the same way and for just the same reasons. Moreover, they recognize that one of the ways one can make a bad mistake is to neglect to include on the list of potential conclusions all the logical possibilities. By analogy, one of the common mistakes in ethical decision making is to neglect to pose all the alternatives for action.

"If by some magical gift from the fairy godmother," I tell them, "you could guess the correct diagnosis one hundred percent of the time,

you would still flunk the course in internal medicine or the course in pediatrics. You recognize that your instructors are quite within their rights to demand from you that you justify your diagnostic conclusions. Similarly, when you make decisions that have ethical components, what I would like to see is that you come to accept as a perfectly legitimate demand that you be able to give an account for your conclusions."

I tell the students that I teach clinical skills - the clinical skills relevant to ethical decision making. I do that in part to get and hold their attention, so that they perceive ethics as relevant to their education and the ethicist as a legitimate member of their faculty. But that conceptualization of my role is not merely a pedagogical attention-getter. I think I am firmly in the highest tradition of the liberal arts. I am teaching clinical skills because I honestly believe that that is the loftiest and most enduring function of the ethicist, indeed of any humanist, in medical education.

CARING: AN ETHICAL ISSUE

Noreen E. Mahon

Today, much of the emphasis on ethical issues in health care have focused on life and death situations, dealing specifically with issues of euthenasia, dying, and abortion, for example. However, there are ignored ethical challenges in the daily routine activities of professional practice (Levine, 1977). One ignored ethical issue that seems to be relegated as fairly insignificant is the issue of the ethics of caring. According to Levine (1977, p. 846) "Ethical behavior is not the display of one's moral rectitude in times of crises. It is the day-by-day expression of one's commitment to other persons and the ways in which human beings relate to one another in their daily interactions."

Although most patients say they want to be cured of their illness, above all the patient wants someone to care. It may well be that the demand for caring in our impersonal, urbanized, highly technical world is greater than ever before (Bandman & Bandman, 1977).

The nature of nursing makes it impossible for a person to stand aside from the experiencing of interacting with other people. It is through intense, personalized involvement that a moral environment is created in which care is not only excellent, but a sincere response to human needs (Levine, 1977).

The socialization of professionals is a major factor in the way in which the professional views his roles, his responsibilities, and his relationships with colleagues and clients. People are socialized by both formal education and training (Fromer, 1981). More importantly, a person develops values as a result of the attitudes and behaviors of parents, the cultural and religious environment in which a person is raised, the kinds of readings and thinking a person has done, the influences of teachers and significant social relationships, the experiences a person has had, the ways a person was treated during early years, the way a person has learned to respond to stimuli, the individual's intelligence, and a person's relationship to spiritual matters. Professional values are a reflection and expansion of personal values. When a person enters nursing, the person does not suddenly begin to develop values nor does the person change them to meet new life experiences and circumstances. What happens is that the person adopts existing values to professional experiences, circumstances, and expectations (Fromer, 1981, p. 15).

In order for the message, "I care," to be convincing in the health care setting, a delicate balance of technical competence and personal modes of approach is acquired which enables the client to know that he/she is

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Dr. Mahon is a Professor in the College of Nursing at Rutgers University, Newark, New Jersey.

respected, and that his/her unique problems are taken seriously. Today, often the criticism is expressed that health professionals are technically competent but fail to show the personalized nurturing required for truly humanized care (Purtilo & Cassels, 1981, p. 41).

"Caring as a professional and personal value is of certain importance in providing a normative standard which governs our actions and attitudes toward those for whom we care" (Carper, 1979, pp. 11-12). Leininger stated that "caring acts and decisions make the crucial difference in affecting curing consequences. Therefore, it is caring that is the most essential and critical ingredient to any curative process" (1977, p. 2).

Mayeroff defined caring as "a process, a way of relating to someone that involves development....in time through mutual trust and a deepening and qualitative transformation of the relationship" (1972, p. 1). Caring should not be confused with such meanings as wishing well, liking, comforting; it is not an isolated feeling or a momentary relationship (Mayeroff, 1972). Moreover, Mayeroff (1972) addressed a generalized pattern of caring. In a caring relationship a person is experienced both as separate and as an extension of oneself. The person being cared for is viewed as having dignity and worth. Caring is the opposite of possessing, dominating, or negatively manipulating. Caring cannot be a habit or occur in the abstract. Finally, Mayeroff (1972) identified eight major components of caring:

1. Knowledge, both general and specific, is required since caring is not good intentions or warm regards.

2. Maintaining or modifying behavior according to variance in circumstances or perspectives is another caring component.

3. Patience can be viewed as perceptive participation with others.

4. Honesty is viewed as a positive, active confrontation and an openness to oneself and others.

5. Trust is related to the appreciation of the independent existence of others. Trusting in relationships involves a letting go; it includes risk and courage.

6. Humility involves continuing learning and an awareness of each new situation regardless of how extensive one's previous experiences have been. It encompasses an awareness of personal limitations.

7. Hope is viewed within the context that there is something worthy of commitment. Hope mitigates against despair.

8. Courage makes risk possible and may carry one beyond safety and security. Courage is based on informed knowledge, by past experiences, and by a trust in one's ability to grow.

Clemence (1969) described caring in terms of commitment. The committed is a person who accepts full responsibility for his/her actions and is willing to take risks, to be a "witness" to life. On the other hand, those who refuse commitment by exhibiting detachment, callousness, and

cynicism are "spectators" to life rather than "witnesses."

Carper (1977) describes key issues related to caring that have evolved from increased specialization and the impact of science and technology on health care. The key features that can be identified with caring as an ethical issue are:

1. the nature of the professional-patient relationship;

2. informed consent;

3. determination of the quality of life;

4. determination of ethical participation in decision-making.

When the professional-patient relationship is one in which the components of caring exist, one would expect the evolvement of the following model. Within the relationship, the basic obligations are governed by the norms of individual freedom with preservation of the person's dignity. Honesty is essential in terms of truth telling and promise keeping to insure a truly informed, voluntary consent. Mutual trust exists in the relationship even though there may not be a complete mutuality of value sharing. That the professional practitioner has the skill to make technical decisions is recognized by the client. The professional recognizes that the technical decisions are governed by a prior shared decision-making process that respects the moral integrity of each party. If an attempt is made to emulate this model, patients would have access to the science technology made available in a caring relationship (Carper, 1977).

The question, then, can be raised, "How can the health care professionals learn to be more humane and caring in interactions with clients?" One approach to increasing awareness of the caring components is through a careful assessment and evaluation of course content in educational programs. For example:

1. Insure that students deal with codes of practice and human rights guidelines for nurses in clinical and other research (A.N.A., 1968, 1975).

2. Increased attention in specifically designated nursing courses to formal discussions of moral issues and ethical theories. A continuing lack of prepration in these areas may ultimately lead to an "alienating sense of frustration among individual nurses, and to an unfortunate demoralization within the nursing profession as a whole" (Rabb, 1976, p. 179).

3. Another approach to increased awareness of the value of people is through exposing professional students to a wider range of humanities courses. According to Carper (1979, p. 18), studies in the humanities may provide students with a "broader and more representative understanding of the factual and imaginative dimensions of the human condition."

4. Faculty in professional schools need to demonstrate caring through interactions with peers, students, and clients. Perhaps role-modeling

would help students to learn to value the dignity and worth of persons.

5. A need to examine or reexamine our personal value system. Silva (1974, p. 2007) states that, "because personally articulated philosophies usually have more meaning to the individual, the nurse who has not already done so should attempt to make explicit her own ethical beliefs." Some questions that a person can ask himself/herself are: How do I define good and evil? What does truth mean? How do I respond when the beliefs of others differ from my personal beliefs? This last question can raise many issues related to personal-professional conflict.

A recent research study (Packard, Schwebel, & Gavey, 1979) addressed concerns of final semester baccalaureate nursing students. The investigators found that students were concerned with task and self-related issues and less concerned about client-related concerns. These findings raise grave issues for educators. If professional schools are to produce technically competent and caring practitioners, a relook at the educational process of professionals is necessary.

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ETHICS AT OPERATIONAL LEVELS
WORKSHOP DISCUSSION

Michael David Rohr, Moderator

At the outset, one participant insisted on the importance of outside input in the formulation of a code of ethics for each profession in order to counteract both the lack of perspective of those within a profession and the tendency of codes of ethics to serve a profession's vested interests. Several others agreed, but an engineer objected that outsiders would lack the expertise necessary for understanding what a professional does. The moderator asked whether the knowledge required for understanding ethical issues within a profession was as great as that required for actually practicing the profession; most participants thought it was not.

The adequacy and realism of, and degree of compliance with, codes of ethics in different professions were compared; the dentists seemed happier about their's than the rest. One participant lamented the lack of programs, or even agreed upon procedures and standards, for measuring the effectiveness of codes of ethics in different professions; several others agreed. Two fascinating case histories of actual ethical problems experienced were narrated by a dentist and a social worker, and the principles involved in their resolution were discussed by the workshop. Both involved providing information or evidence about clients to law enforcement officials.

One participant then raised the problem of ethical training in professional schools. He claimed that cheating is now tolerated in some medical schools by the majority of students and by many faculty, and that this bodes ill for future ethical standards in the medical profession. Several others were shocked, and there ensued a general discussion of the morality and psychology of cheating and the role of tests in professional education.

Some participants insisted on the importance of courses devoted to ethics in the training of professionals; such courses would signal the importance of ethics, provide tools and techniques for thinking about moral issues, and give preprofessional exposure to, and practice in, dealing with the most common problems of an ethical nature that they are likely to confront. Other participants argued that courses on professional ethics would be of little use if sensitivity to, and insistence on, ethical standards were not manifested by the teachers in all courses in the training of preprofessionals, since these teachers are the role-models for the future professionals who are being shaped.

The importance of the prevailing moral atmosphere of contemporary society in determining the ethical practice of professionals was recognized by several participants. Some claimed that the last decades have seen a significant decline in conformity to moral standards, and that

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Dr. Rohr is a Professor in the Department of Philosophy at the Newark College of Arts and Sciences, Rutgers University, Newark, New Jersey.

compliance with ethical principles has become very difficult. One young building contractor gave eloquent testimony to this, claiming that in his business, virtue and profit are incompatible. Other participants retorted that the apparent decline in morality is merely apparent, and that increased awareness of ethical violations, and the very occurrence, and increased frequency in recent years of meetings like this one on The Professions and Ethics, demonstrate an overall improvement in public and professional morality. On this hopeful note, but with disagreements unresolved, there was a general sense that we had all profited from the workshop and the conference.

THE PROFESSIONS AND ETHICS
WORKSHOP DISCUSSION

Robert L. Carter, Moderator

Our workshop began with a discussion of the ideas emanating from the papers presented by the general session speakers, notably Douglas Harper, Daniel Callahan, and Rosemary Chalk.

As moderator, I began the workshop discussion by asking for reactions to these speakers. The following discussions ensued.

First, I formulated my understanding of Harper's remarks in traditional sociological categories. Harper seemed to locate his concept of ethics and ethical issues within the context of what I shall call a political process. To paraphrase his remarks for the workshop, I noted Harper's contention that ethics issues, in practice, merge into considerations of the establishment of standards. The promulgation of standards expresses an attempt to define common values in the context of competing interests and thus to seek a balance of interests reflected in law.

While Mr. Harper seemed to feel comfortable with embracing the notion of politics and standards simultaneously, many of the workshop participants felt that ethics "somehow, in a way," transcended the political sphere, both in the moral values that emanate from ethical principles, and in the modality of action - conformity or deviance with respect to rules of professional conduct.

I suspect that this latter consideration - mode of ethical compliance or deviance followed from the address given by Rosemary Chalk in which she argued that while previous speakers had been relating the question of ethical behavior mainly to parameters of acceptable public conduct, it was her contention that emphasis must be placed on the notion of the individual thought processes involved in deriving ethical questions and ethical answers. The discussion of this idea ranged far and wide. It was suggested that ethics defined in terms of individual virtue (moral duty) is decidedly more difficult to carry through in practice within a milieu embodying conflicting organizational roles and objectives in the first event, and under circumstances in which it is not fully apparent what is the right course of action.

This comment invited some thinking on the distinction between individual virtue and dilemmas of ethics. The problem of virtue may be thought of as one in which the rules of conduct relevant to an individual or community are known and basically shared, but compliance is either difficult or

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Mr. Carter is a Professor of Sociology at University College, Rutgers University.

impossible in the instant case for reasons of "weaknesses of the flesh" or lack of personal resolve. Genuine ethical dilemmas emanate from situations in which the right course of conduct is not known or in which ambiguity characterizes the situation of moral choice as, for example, in genetic engineering or the construction of nuclear weapons.

Workshop participants felt that the latter sort of ethical conflicts were more prevalent in some but not all organizations, agencies, and forms of private professional practice. It was generally felt that the "high-level" scientific research - e.g., genetic engineering - posed these issues more saliently than does the dispensing of prescription drugs. It was recognized, however, that no profession is immune to such ethical dilemmas. Everyday practice, it was felt, embodied a more decisively operational set of problems bearing on the ethics of professional practice. Among these considerations the workshop generated the following:

1. Discussion followed about whether public perception of the self-serving bases of professional canons is a legitimate and valid perception and the problems this posed. Responses ranged from yes, no, to maybe. Generally, it was agreed that what I shall term cognitive dominance or control of the knowledge base of a profession enhanced the status of members individually and as organizations, and tended to preclude broad-based sharing of knowledge with client groups or the public at large.

2. With the growing phenomenon of team practice, bureaucratic administration and "bossism" over much professional work - e.g., community lawyers under a national government administration - new rules or canons may be needed to insure the integrity of the professional's efforts to pursue his/her client's interest and the interest of the society as a whole. It must be noted that not all participants felt that this was possible. New canons may not be the answer.

3. Some participants called into question the continued professionalization of increasing areas of work under a set of general canons, only slightly modified by fields of application as inappropriate and possibly unethical in itself. Reference was made to social work and legal services law practice in which political and ideological identification <u>with</u> clients and clients' causes, not <u>distance</u> from clients, are the real day-to-day operational modalities in ghetto communities. This was viewed as desirable, and may portend different professional models.

4. A great deal of discussion was of the order of criticizing and understanding various alternatives in professional styles of delivering services. Specifically, entrepreneurial practice, as opposed to the efficiency of group practice, was debated with the conclusion that the rise of the latter and the decline of the former is a part of the continuing process of the rationalization and bureaucratization of everything. This "fact" was greeted with ambiguous sentiments.

5. I would be remiss not to mention this final workshop consensus that continuing education of practitioners to both the growing cognitive

base of their fields and to the practical ethical dimensions of its application is essential to maintain public confidence.

I conclude with observations from my own study of ghetto lawyers that show how canons of ethics were rarely followed in any conscious manner, and often were not even known; rather, they were almost always modified to meet the exigencies of carrying out their law practice in a difficult social milieu. And while this is to some extent true of all work, it will be of the utmost importance for professional workers to demonstrate more than mere monopoly of competence; it will be necessary to revitalize service to society in the tradition of a calling.

ETHICAL CODES: SORTING OUT RHETORIC AND REALITY
WORKSHOP DISCUSSION

Frank Fischer, Moderator

Discussion in this workshop was quite animated. In large part this was attributable to the fact that many of our participants were professionals actively involved in the development of ethical issues and codes in their respective disciplines. For example, they included a lawyer serving on an ethical review board, a dentist with a fellowship to study ethics in the medical professions, a college professor who teaches ethics in public administration in Wyoming, a member of the New Jersey medical licensing board, a social worker actively involved in writing a professional code of ethics, a professor of medical ethics in a local medical school, a specialist on ethical issues from the American Association of Applied Scientists, and a staff member from the Federal Executive Institute for government managers. As a group, they brought a great deal of practical experience to the discussion, providing the basis for a sophisticated exchange.

The central question that dominated most of our discussion emerged quickly. It concerned the relationship of professional rhetoric about ethical codes to the realities of practice. While it would not be fair to say that there was unanimous agreement, there was a clear majority who expressed a cynical attitude about the role of codes. A number of more outspoken participants argued that codes do not play the important regulatory role that professional associations frequently maintain. This perspective clearly clashed with a number of views presented by morning panelists representing various professions.

Several of those who questioned the value of ethical codes as a regulatory device proffered alternative explanations of codes in the professions. Perhaps the most fascinating perspective to be advanced was the view that codes play different roles in different phases of an organization's history and development. Code-writing, it was argued, tends to assume its most important role in the early stages of professional evolution. During this period, codes are advanced to assist in the legitimation of the profession's basic social functions. As a profession succeeds in establishing roots in society, however, codes tend to diminish in both importance and size. Evidence of this explanation was principally based on the history of code development in the American Medical Association.

While there was disagreement about the validity of this viewpoint, it provided a handle on an interesting avenue for exploration. The lawyer in the group took exception to this "evolutionary" explanation, arguing that the experience of the legal profession suggested evidence to the contrary. In Law, he pointed out, the American Bar Asociation has devoted increasing energies to code development over the years. There has been, in short, a

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Dr. Fischer is a Professor of Public Administration in the Newark College of Arts and Sciences, Rutgers University, Newark, New Jersey.

continuing growth of interest. Although one member averred that code-writing might be a professional pathology in the case of the legal profession, there was fairly general agreement that the nature of code development might depend upon the specific histories of the various professions.

Some of the representatives from the medical professions seemed to feel that regulation was better taken care of in the courts. From their perspective, serious abuses were likely to end up there anyway. Others disagreed, arguing that this constituted a narrow perspective on the problem.

If code enforcement is not the principal function of professional code development, then what is? That seemed to be the subsequent direction of the discussion. Many felt that one of the most positive functions of codes was their ability to facilitate ethical education within the professions. They tend, for example, to promote the development of courses on ethics in the professional college curriculum. Examples were cited in medicine, law, and public administration.

One participant pointed out that a fair amount of the concern for ethical issues has emerged from outside the professions. In many cases, philosophers specializing in "applied ethics" seem to have played as much a role as the practitioners. The Hastings Institute's emphasis on ethical issues in the biological and medical sciences was cited as an illustration.

Another discussant averred that the growing interest in ethical issues may have been promoted, at least in part, by the increase of Federal money and influence in technological research and social regulation, particularly in the areas of occupational health and safety, environmental, and consumer protection. Recognition of Federal influence led to speculation about the impact of recent budgetary and regulatory cutbacks on the continuing development of ethical concerns.

From time to time in the discussion the topic of "whistle-blowing" arose. One group member maintained that experience in public administration suggests that, while codes have served to indicate employees who have mustered the courage to speak out on ethical issues, only in a very few cases have professional associations been able to get an employee's job back. Members of the other professions seemed to generally concur.

The inability to ensure the employment of whistle-blowers posed questions about the powers or clout of professional associations. Pointing to an example of nurses, one discussant argued that professionals and their associations would not have real power over the terms of employment until they are willing to withhold their labor in management-employee disputes. Another pointed out that such power is at present constrained by the fact that a significant percentage of practitioners do not belong to their professional associations. A sizable number of lawyers, for instance, do not join the American Bar Associations. The same holds true for medical doctors and the AMA.

During the final 10 or 15 minutes of the workshop, we tried to figure out where all of this had taken us. If ethical codes are weak - as almost everyone agreed--what is the remedy? No clear consensus emerged. The cyn-

ics continued to favor increased reliance upon legal regulation, while the others (probably the majority) generally preferred to rely upon a combination of ethical codes, education, and legal regulation.

THE PROFESSIONS AND ETHICS
WORKSHOP DISCUSSION

Jeffrey Slovak, Moderator

In that the question of the relationships between ethics, the professions and the public is broad in scope and far-reaching in ramifications, this discussion group ranged equally broadly in the topics it raised and the points it covered. Even granting that, and further granting the diversity of the group in terms of the professions it included (architecture, accounting, teaching, social work and biomedical research), some common themes and concerns did emerge from the meeting. Those are the topics of this report.

At the heart of any discussion of professional ethics lies the professional judgment and the discretion associated with it. That being the case, the group members felt that questions of ethics and professional judgments were too central to the very meaning of "profession" to leave their resolution either to law and the courts or to isolated individual professionals. The organized professions can and should play an active role in resolving the ethical issues attendant on their practices and in insuring adherence to ethical norms among their members.

The group then began to address the positive and negative inducements that organized professions might employ toward those ends. One problem that many professions face is an insufficiently elaborated set of penalties that might be leveled against ethical violators. There is a large gap between reprimand and loss of license; neither may be an appropriate penalty for more "middle-range" violations. The group concurred that the professions should seek to develop a range of penalties for ethical violations in order to more justly tailor "punishments" to "crimes."

Involvement in enforcement of professional ethics should also be a priority for professions and their members. While some professions have developed specialized units for this purpose, others seem to have abdicated any role whatsoever in the enforcement process. The members of the group felt it essential that the professions play active roles in this regard, that they develop internal review and sanction processes (with just regard for questions of due process and fairness) and that, where state regulation exists, their members become active in peopling hearing boards and decision-making bodies. The latter involvement may require enforced or "drafted" participation, an action on which the group members were in concurrence.

As the allotted time for discussion began drawing to a close, the group began to address the need for organizational incentives for ethical adherence to complement the punishments for ethical infractions. A promising possibility suggested was the use of direct compensation funds for

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Dr. Slovak is a Professor of Sociology at the Newark College of Arts and Sciences, Rutgers University, Newark, New Jersey.

clients, like those presently employed by the bar, to at least partially reimburse clients for the costs they might incur through the misbehavior of professionals. Similar funds might be established to reward professionals for ethical adherence in tough situations, especially those that pit ethical professionals against the dictates or actions of powerful bureaucratic-employing organizations. Unfortunately, this topic could not be pursued further; the discussion time had elapsed.

PERSPECTIVES ON ETHICS AND THE PROFESSIONS

James M. Giarelli

Do special ethical norms apply to professions and what ethical issues arise from the efforts of professionals? Is professional ethics synonymous with morality? Are there immoral activities that are not professionally unethical? Are there moral activities that are professionally unethical? These questions, drawn directly or by implication from the conference agenda, were the basis for the workshop discussions. Following Daniel Callahan's suggestions regarding the sources of and sanctions on ethical sensibility, the perspectives of the individual as a professional practitioner, as a member of a professional-occupational group or organization, and as a participant in a larger public or society were considered.

It quickly became evident that this very method of examining professional ethics from a number of "perspectives" was a reflection of the way in which modern professional workers are educated. The institutional matrices in which professionals are trained, work, and which they fund through their clients, encourage the splintering of experience into existential, familial, vocational and public "components" whose connections become weak and difficult to maintain. On one hand the professional acquires status and certification through technical performance and specialization. In professional education programs where the need for practical information and skills is stressed, the legitimacy of normative considerations is eroded due to their alleged "softness" and subjectivity. When ethics is considered, it is usually assigned a bit part in the curricular cast, a character actor with the voice of conscience. This approach results more in the professionalization of ethics than in the development of professional ethics. Ethics is viewed as something external to the culture of professionalism, something to be adopted as a means or technique for responding to criticism and quieting dissatisfaction. In this view, ethics or ethical values are simply one more factor professionals must learn in school and incorporate into their professional repertoire in order to meet better the needs of clients.

On the other hand, professionals acquire their status and legitimacy not only through technical and epistemic competency, but also through an appeal to the ethical virtues of service and compassion. Almost all professional groups count themselves as part of the "helping" professions and thus the very act of membership in a professional group appears to demand obligatory, sometimes even supererogatory, responsibilities. The administration of justice, the conservation of culture, the protection of the sick, poor, and aged, the guarantor of quality in natural and created environments, and the amelioration of the dislocations of modernity, once all public duties, have become, for good or ill, the stuff of professional job descriptions. While the professional's mantle of competence, service, and compassion has been challenged severely, the critique is more evidence of a cultural legi-

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Dr. Giarelli is a Professor of Philosophy in the Graduate School of Education, New Brunswick, New Jersey.

timation crisis than a narrow challenge to professionalism.

The professional finds himself in a problematic situation. A wary public demands results that are informed and efficient yet resents intrusion and manipulation. Professional organizations confer technical and moral legitimacy through their certification and prestige, yet in their abstract juridical procedures and self-justifying political stances act as an institutional barrier between the professional and his public and clients. The individual professional practitioner is drawn into the occupation by the desire to know and to serve, yet often finds the possibilities for ethical conduct limited by oppressive institutions and efficacious action limited by individual conscience, professional codes, and public control. If this problem can be viewed as the occasion for dynamic interpretation, if the dialectic of knowledge and virtue can be entered, undergone, and reconstructed, the possibility for a professionally, publicly, and personally integrated ethical point of view remains alive. Through a continuing and vigilant examination of the structures and activities of professional life, the public is bound up in professional relations, and the engagement of the experiential dimension, the narrowness of both professional ethics and ethical professionalism can be countered. Finally, the discussion of these questions and issues within a group representing the views of different interested parties, will enable the development of a more comprehensive and intelligent perspective on the ethical dimensions of professional and public policy and practice.

APPENDIX

MISSION STATEMENT

RUTGERS UNIVERSITY COMMITTEE ON PROFESSIONS
AND PUBLIC ACCOUNTABILITY

The aim of the University Committee on Professions and Public Accountability is to examine, from a multi-disciplinary perspective, issues affecting the contemporary professions as well as the concerns of educators, professional associations, government agencies and regulatory boards, and the public at large in New Jersey.

The University Committee seeks to develop Professions Forums comprising public lectures, seminars, and conferences. The Committee will develop these programs in cooperation with its state-wide Advisory Board consisting of leaders in state professional associations, persons active in state government, and community representatives and leaders.

As a center for multi-disciplinary education, the University provides an appropriate and vital setting for intellectual exchanges concerning the social, economic, legal, and educational features of the professions. Changing societal expectations, alterations in consumer attitudes, technological advances, growth in specialization, the emergence of new specialties, modification in government efforts, and issues arising in credentialing require that the public, educators, students, and professionals have the opportunity for information sharing, creative thinking, and problem solving.

We hope by means of the Professions Forums programs to take advantage of such intellectual dialogues so as to enhance both the contributions of professional education at the University and other educational centers and the quality of professional services in the state.